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Consolidated Laws of New York

ANNOTATED

BOOK 63

VILLAGE LAW

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Consolidated Laws of New York Annotated

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THE CONSOLIDATED LAWS OF NEW YORK
ANNOTATED

The books of this edition are arranged and numbered as follows:

1. Report of Consolidators and Treatise on Statutes and Statutory Construction
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New York Laws, statutes etc Compilation

THE CONSOLIDATED LAWS OF NEW YORK, ANNOTATED

AS AMENDED TO THE CLOSE OF THE REGULAR AND EXTRAORDINARY SESSIONS OF THE LEGISLATURE OF 1917

Compiled under the Editorial Supervision of
WILLIAM M. McKINNEY

BOOK 63
Village Law

EDWARD THOMPSON COMPANY
Northport, New York
1918

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STATE OF NEW YORK }
OFFICE OF THE SECRETARY OF STATE } *ss*:

In pursuance of the authority vested in me, by section 932 of the Code of Civil Procedure, I, Francis M. Hugo, Secretary of State, hereby certify that the copies of the laws contained in this volume are correct transcripts of the text of the original laws, and in accordance with such section are entitled to be read in evidence.

Given under my hand and the seal of office of the Secretary of State, at the Capitol in the City of Albany, this 30th day of October, 1917.

[L. S.]

FRANCIS M. HUGO,
Secretary of State.

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The annotations in this book close with the cases reported in the following volumes:

220 New York
177 Appellate Division
100 Miscellaneous
165 New York Supplement

The Supplements will cover decisions from these points.

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CONSOLIDATORS' GENERAL NOTE ON VILLAGE LAW

The Village Law is the result of an examination of all the general statutes relating to the incorporation, government and finances of villages, beginning with L. 1847, ch. 151, entitled "An act in relation to firemen in incorporated villages," the act in relation to cemeteries in such villages (ch. 209) and the general incorporation act of that year (L. 1847, ch. 426) and including the legislation of the year 1907.

The report of the Board of Statutory Consolidation is dated June 26, 1907, and the Consolidated Laws were enacted in 1909. The legislation for 1908 was examined by the board and any changes that affected the laws as reported in 1907 were embodied in the laws as reported by the board to the legislature of 1909.

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VILLAGE LAW

LAWS 1909, CHAP. 64

AN ACT relating to villages, constituting chapter sixty-four of the consolidated laws.

Became a law February 17, 1909, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

[7]

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VILLAGE LAW

CHAPTER 64 OF THE CONSOLIDATED LAWS

Article 1. Short title (§ 1).
2. Incorporation (§§ 2–33).
3. Officers and elections (§§ 40–68).
3-A. Receivers of taxes in certain villages (§§ 70–75).
4. Powers, duties and compensation of officers (§§ 80–95).
5. Finances (§§ 100–138-c).
6. Streets, sidewalks and public grounds (§§ 140–174).
7. Police department (§§ 180–190).
8. Fire department (§§ 200–210).
9. Water (§§ 220–235).
10. Light (§§ 240–247).
11. Sewers (§§ 260–278).
11-A. Board of public works (§§ 278–283).
12. Cemeteries (§§ 290–297).
13. Reincorporation (§§ 300–305).
14. Provisions applicable to certain villages (§§ 310–321).
14-A. Provisions applicable to a village embracing the entire territory of a town (§§ 322–329-c).
15. Miscellaneous provisions (§§ 330–359).
16. Effect of chapter (§§ 380–381).
17. Laws repealed; when to take effect (§§ 390, 391).

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ARTICLE 1

Short Title

Section 1. Short title.

§ 1. Short title. This chapter shall be known as the "Village Law."

The original Village Law was chapter 21 of the "General Laws," being L. 1897, ch. 414.

Effect of chapter on special villages: see infra, § 380.

Effect of revision on general villages: see infra, § 381.

Provisions applicable to certain villages: see infra, § 310 et seq.

Provisions applicable to a village embracing the entire territory of a town: see infra, § 322 et seq.

Change of name of village: see infra, § 347.

Dissolution of villages: see infra, § 350.

Consolidation of villages: see infra, § 352.

Municipal corporation as including village: see General Corporation Law, § 3, subd. 1; General Municipal Law, § 2.

Certain articles of General Corporation Law not applicable to municipal corporations: see General Corporation Law, § 300.

Effect of Penal Law on charter of municipal corporation: see Penal Law, § 40.

Term "village" defined: see General Construction Law, § 54.

"Village" as used in Conservation Law: see Conservation Law, § 62.

Village planning commissions: see General Municipal Law, § 234 et seq.

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ARTICLE 2

INCORPORATION

Section 2. Requisite population.
3. Proposition for incorporation and consent of property owners.
4. Notice of hearing.
5. Proceeding on hearing.
6. Decision of supervisor.
7. Notice of appeal from decision of supervisor.
8. Hearing and decision of appeal.
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10. Notice of election.
11. Conduct of election.
12. Qualifications of electors.
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14. Canvass of election.
15. Appeal from election.
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20. New election.
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23. Compensation for services under this article.
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26. First election of officers, when held.
27. Appointment of village clerk; inspectors of election.
28. Notice of election of officers.
29. Officers to be elected; terms of office.
30. Conduct of election.
31. First meeting of board of trustees.
32. Temporary loan for expenses.
33. Incorporation where population is fifty or more and less than two hundred.

§ 2. Requisite population. A territory not exceeding one square mile, or conforming to the boundaries of a water district, lighting, fire or school district, or an entire town, or two school districts, containing in each case a population not less than two hundred, and not including a part of a city or village, may be incorporated as a village under this chapter.

This section was derived from Village Law, L. 1897, ch. 414, § 2, as amended by L. 1904, ch. 35, § 1. It was amended by L. 1909, ch. 555, § 1. It was again amended by L. 1915, ch. 31, § 1, which added "or conforming to the

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boundaries of a water district, lighting, fire or school district." It was further amended by L. 1917, ch. 65, § 1, which added "or two school districts."

Provisions applicable to certain villages: see infra, § 310 et seq.

Provisions applicable to a village embracing the entire territory of a town: see infra, § 322 et seq.

Legislature not to pass private or local bill incorporating villages: see CONSTITUTION, art. III, § 18.

Incorporation under former statute.— A former statute (1 R. S., 7th ed. 884) provided for the incorporation of any part of a town or towns, not in any incorporated village, containing a resident population of not less than three hundred persons, and, if it included in its boundaries a territory of more than one square mile in extent, containing a resident population of not less than three hundred persons in each and every additional square mile of territory. It was held in Matter of Elba, (1883) 30 Hun 548, that where the territory included within the proposed village was one square mile and a quarter and the population residing therein was 427, it could not be incorporated under the statute.

§ 3. Proposition for incorporation and consent of property owners. Twenty-five adult freeholders residing in such territory may institute a proceeding for the incorporation thereof as a village, by making and delivering to the supervisor of the town in which such territory is situated, or if situated in two or more towns, to the supervisors of each of such towns, a proposition in substantially the following form:

PROPOSITION

FOR THE

Incorporation of the village of , ...

The undersigned adult resident freeholders of the territory hereinafter described propose the incorporation thereof by the name of the village of .....

The territory proposed to be incorporated does not exceed one square mile and is bounded and described as follows: (or, the territory proposed to be incorporated is the entire town of .....[1] or an entire school, lighting, fire or water district, suitably describing such district with common certainty).

Such territory contains a population of ....., as appears from the enumeration hereto attached.

Dated .....

(Signatures and residences).

The proposition shall be signed by the persons proposing such incorporation, with the addition of the town in which they respectively reside. There shall be attached to said proposition and delivered to said supervisor or supervisors concurrently therewith, a written consent to the proposed incorporation in substantially the following form:

[1] "or an entire . . . with common certainty" new.

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CONSENT

To The

Proposed incorporation of the village of .....

The undersigned, owners of one-third in value of the real property within the territory described in the proposition hereto attached, as assessed upon the last preceding town assessment-roll, hereby consents to the incorporation thereof as in said proposition set forth.

Dated .....

Signatures.	Residences.	Assessments.

The said consent shall be signed by owners of real property, situated within such territory constituting one-third in value thereof, as assessed upon the last preceding town assessment-roll, with the addition of their places of residence and the assessment of their said real property, respectively. A list of the names of the inhabitants of such territory shall be attached to and accompany the proposition. At the time of the delivery of the proposition the sum of fifty dollars shall be deposited with one of the supervisors for the purpose specified in this article.

This section was derived from Village Law, L. 1897, ch. 414, § 3, as amended by L. 1904, ch. 35, § 2. It was amended by L. 1915, ch. 31, § 1. The amendment is shown in the footnote.

Compensation for services under this article: see infra, § 23.

Date of incorporation: see infra, § 21.

Payment of expenses of incorporation: see infra, § 25.

Payment of expenses of village not incorporated: see infra, § 24.

Injunction to restrain incorporation.—An injunction will not be granted to restrain a proposed village incorporation on the ground that the parties applying therefor will be subjected to burdens of local government disproportionate to the benefits accruing therefrom. Stephens v. Minnerly, (1875) 3 Hun 566.

"Real property" as inclusive of special franchises.—In the provision of the present section that consent to the incorporation of the village "shall be signed by owners of real property situated within such territory constituting one-third in value thereof, as assessed upon the last preceding town assessment roll," the term "real property" has not the broad meaning given to it in the Tax Law; it does not include special franchises, but refers to real estate only. A supervisor of a town, therefore, in rendering a decision on a proposition to incorporate a village, properly excludes the assessed valuation upon the special franchises within the territory of the proposed village and the owners thereof from participation in the preliminary steps of incorporation. Matter of Oriskany, (1914) 87 Misc. 357, 150 N. Y. S. 724.

Tenant in entirety as a freeholder.—Where a man and his wife own lands as tenants in entirety each is a "freeholder" within the meaning of the present section and should be counted as such in a proceeding for the proposed incorporation of a village. Matter of Holcomb, (1916) 97 Misc. 241, 162 N. Y. S. 848.

Necessity of signature of both tenants in entirety.—Where a husband and wife are tenants in entirety of lands, and consent to the incorporation of the village is signed by the husband but not by the wife, the amount of their assessment cannot be considered in the aggregate value of those who sign the consent. Matter of Holcomb, (1916) 97 Misc. 241, 162 N. Y. S. 848.

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Sufficiency of signature by tenants in entirety.— Where lands owned by tenants in entirety are assessed to them jointly, and in signing the consent to a proposed village incorporation each of them signs for one-half of the amount of the assessment, it is a substantial compliance with the statute. Matter of Holcomb, (1916) 97 Misc. 241, 162 N. Y. S. 848.

Valuation of railroad property.— Where a railroad passes through the proposed territory the assessed value of the railroad property within the township but outside of the limits of the proposed village should not be added to the total amount of assessed value within the territory in question. Matter of Holcomb, (1916) 97 Misc. 241, 162 N. Y. S. 848.

Cited.— This section was cited in People v. Patchogue, (1916) 217 N. Y. 466, 112 N. E. 169, affirming 171 App. Div. 347, 156 N. Y. S. 1096, in connection with the question of extension of the boundaries of an incorporated village. See infra, § 348 note.

§ 4. Notice of hearing. Within ten days after the receipt of such proposition the supervisor or supervisors shall cause to be posted in five public places in such territory and also published at least twice in each newspaper published therein, a notice that a proposition for the incorporation of the village of (naming it) has been received by him or them, that at a place in such territory and on a day, not less than ten nor more than twenty days after the date of posting such notice, which place and date shall be specified therein, a hearing will be had upon such proposition; and that such proposition will be open for public inspection at a specified place in such territory until the date of such hearing.

This section was derived from Village Law, L. 1897, ch. 414, § 4.

Cited.— This section was cited in Matter of Holcomb, (1916) 97 Misc. 241, 162 N. Y. S. 848, in connection with the construction of section 3. See supra, § 3 note.

§ 5. Proceeding on hearing. The supervisor or supervisors shall meet at the time and place specified in such notice, and shall hear any objections which may be presented against such incorporation upon either of the following grounds:

1. That a person signing such proposition is not qualified therefor, or

2. That the persons signing such consent are not the owners of one-third in value of the real property within such territory, as assessed upon the last preceding town assessment-roll, or

3. That, if the territory is less than an entire town, it contains more than one square mile and does not conform to the boundaries of an entire lighting, fire, water or school district, or

4. That the population of the territory is less than two hundred.

All objections must be in writing and signed by one or more resident taxpayers of a town in which some part of the proposed village is situated. Testimony may be taken on such hearing, which shall be reduced to writing and subscribed by the witnesses.

The hearing may be adjourned, but must be concluded within ten days from the date fixed in the notice.

This section was derived from Village Law, L. 1897, ch. 414, § 5, as amended by L. 1904, ch. 35, § 3. Subdivision 3 was amended by L. 1909,

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ch. 555, § 1. This subdivision was again amended by L. 1915, ch. 31, § 1, by which "and does not conform . . . or school district" was added.

Injunction to restrain illegal incorporation.— An injunction will not be granted to restrain the illegal incorporation of a village. Willis v. Staples, (1883) 30 Hun 644.

§ 6. Decision of supervisor. Within ten days after such hearing is concluded the supervisor or supervisors shall determine whether the proposition, consent and papers filed therewith comply with this chapter, and shall within such time make and sign a written decision accordingly, and file it or a duplicate thereof in the office of the town clerk of each town in which any part of such proposed village is situated. The proposition for incorporation, consent and papers attached thereto, a copy of the notice, the objections, testimony and minutes of proceedings taken and kept on the hearing, shall also be filed with such decision in one of such town clerk's offices. If the decision be adverse to the proposition, it shall contain a brief statement of the reasons upon which it is based. If no appeal be taken from such decision within ten days from the filing thereof, it shall be final and conclusive.

This section was derived from Village Law, L. 1897, ch. 414, § 6, as amended by L. 1903, ch. 139, § 3.

§ 7. Notice of appeal from decision of supervisor. If the decision sustains the proposition for incorporation, a resident taxpayer of a town in which any part of such proposed village is situated may appeal therefrom by serving a notice of appeal upon each town clerk with whom the decision was filed, and on at least three of the persons who signed the proposition. If the decision be adverse, five of the persons who signed the proposition may join in an appeal therefrom, by serving a notice of appeal upon each town clerk with whom the decision was filed, and on each person who signed objections to the proposition. All appeals shall be taken to the county court of the county in which the proposition, notice, objections and testimony are filed, and the notice of appeal must be served within ten days after the filing of the decision.

The town clerk with whom the proposition and other papers are filed must, within five days after service upon him of the notice of appeal, transmit all such papers to the county judge.

This section was derived from Village Law, L. 1897, ch. 414, § 7.
Serving notice: see infra, § 330.

§ 8. Hearing and decision of appeal. A person, except a town clerk, by or upon whom the notice of appeal is served, may bring on the appeal for argument before the county court, upon a notice of not less than ten nor more than twenty days. Such notice must be served upon all parties to the appeal, except a town clerk.

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The county court shall hear such appeal, and, within ten days after the date fixed in the notice of argument, shall make and file an order affirming or reversing the decision. The county judge shall file such order, together with the papers upon which the appeal was heard, with the town clerk by whom the papers were transmitted to him. Such order shall be final and conclusive. No costs of the appeal shall be allowed to any party.

This section was derived from Village Law, L. 1897, ch. 414, § 8.

Serving notice: see infra, § 330.

Appeal to appellate division.— No appeal can be taken to the appellate division from an order of the county court on an appeal from the decision of the supervisor in proceedings to incorporate a village. Matter of Cedarhurst, (1907) 121 App. Div. 576, 106 N. Y. S. 275, distinguishing Harrisville v. Lawrence, (1891) 66 Hun 302, 21 N. Y. S. 62.

§ 9. When election may be held. An election to determine the question of incorporation upon such proposition shall be held in either of the following cases:

1. Where a decision has been made sustaining the proposition, and an appeal has not been taken therefrom.

2. Where an appeal has been taken from a decision sustaining the proposition, and such decision has been affirmed by the county court.

3. Where an appeal has been taken from an adverse decision, and the decision has been reversed by the county court.

This section was derived from Village Law, L. 1897, ch. 414, § 9.

§ 10. Notice of election. Within five days after the right to an election is complete the town clerk with whom the proposition and other papers are filed shall give notice of an election to be held in such territory at a specified time and place. The notice shall be signed by the town clerk and posted in ten conspicuous places in such territory, and also published at least twice in each newspaper published therein, and it shall fix a time for such election, not less than fifteen nor more than twenty-five days from the date of the posting thereof. Such election shall be held at a convenient place in such territory between the hours of one o'clock in the afternoon and eight o'clock in the evening, but shall not be held upon a day of a town meeting or of a general election in a town in which any part of the proposed village is situated.

This section was derived from Village Law, L. 1897, ch. 414, § 10. It was amended by L. 1910, ch. 416, § 1, which substituted "eight o'clock in the evening" in place of "sunset" in the third sentence.

Date of general election: see ELECTION LAW, § 290.

Town meetings at time of general election: see TOWN LAW, § 67.

Town meetings generally: see TOWN LAW, § 40 et seq.

Sufficiency of notice.— A notice of election to pass upon the question of incorporation which states that the election will be held between the hours of one o'clock in the afternoon and sunset, is insufficient, if, in fact, the sun sets on the day appointed half an hour before eight o'clock. Matter of Lynbrook, (1911) 142 App. Div. 487, 127 N. Y. S. 82.

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Sufficiency of posting of notices.—The statutory requirement that the notices of election be posted is not complied with where the town clerk merely leaves the notices on the counters of various tradesmen and there is no evidence that any of them are actually posted. Matter of Lynbrook, (1911) 142 App. Div. 487, 127 N. Y. S. 82. A posting of notices on the second of the month for an election to be held on the sixteenth does not meet the statutory requirement that the notices of election must be posted at least fifteen days prior thereto. Matter of Lynbrook, (1911) 142 App. Div. 487, 127 N. Y. S. 82.

Notice given by de facto clerk.— Where a town clerk during his term of office removes to an adjoining town, but continues to perform his duties as such clerk, he is town clerk de facto if not de jure, and a notice of election to determine the question of the incorporation of a village in the town duly signed and posted by him during the interval between his removal from the town and the expiration of his term of office, is valid. Matter of Collins, (1902) 75 App. Div. 87, 77 N. Y. S. 702.

Cited.— This section was cited in Matter of Sag Harbor, (1900) 32 Misc. 624, 67 N. Y. S. 574, in connection with the discussion of the subject of elections on the question of reincorporation of a village.

As to reincorporation of villages, see infra, § 300 et seq.

§ 11. Conduct of election. Such election shall be held at the time and place specified. The town clerk giving such notice shall serve a copy thereof upon the supervisor and town clerk of each town in which any part of the proposed village is situated, at least ten days before the date fixed for such election. Two or more of such officers, including the town clerk giving such notice, shall constitute the board of inspectors to conduct such election. If only one of the officers attend at the time and place fixed for the election, he shall appoint an elector of such territory to act with him as an inspector of such election. If no officer attend, the electors present may choose two of their number to act as inspectors. The inspectors shall file the constitutional oath of office with the town clerk with whom the proposition was filed. Such inspectors of election shall possess all the powers conferred by law upon a board of inspectors of election at a town meeting, so far as the same are applicable. The ballot at such election may be either written or printed, and shall contain either the words "for incorporation," or "against incorporation."

This section was derived from Village Law, L. 1897, ch. 414, § 11.

Form of constitutional oath: see CONSTITUTION, art. XIII, § 1.

Misconduct of election officers and watchers: see PENAL LAW, § 762.

Misdemeanor in relation to elections: see PENAL LAW, § 764.

Official oaths generally: see PUBLIC OFFICERS LAW, § 10 et seq.

Serving notice: see infra, § 330.

Section as affected by general election law.— The present statute governing elections upon the question of village incorporation has not been affected by the changes in the general election laws, or the laws requiring town elections to be had by means of the official ballot or ballot machines. Matter of Taylor, (1896) 150 N. Y. 242, 44 N. E. 790, affirming 3 App. Div. 244, 38 N. Y. S. 348. In this connection see Harrisville v. Lawrence, (1892) 66 Hun 302, 21 N. Y. S. 62; Matter of Webster, (1905) 102 App. Div. 202, 92 N. Y. S. 658.

§ 12. Qualifications of electors. Each elector qualified to vote at a town meeting, who has been a resident of such territory for

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at least thirty days next preceding such election, and who is the owner of property within such territory which was assessed upon the last assessment-roll of the town, may vote at such election. A woman who possesses the qualifications to vote at a town meeting, except the qualification of sex, and who has been a resident of such territory for at least thirty days next preceding such election, and who is the owner of property, within such territory, which was assessed upon the last assessment-roll of the town, may vote at such election.

This section was derived from Village Law, L. 1897, ch. 414, § 12, as amended by L. 1906, ch. 404, § 1.

Illegal voting: see PENAL LAW, § 765.

Qualification of elector at town meeting: see TOWN LAW, § 53.

Qualification of voter at town meeting held at time of general election: see TOWN LAW, § 69.

Qualification of voters generally: see CONSTITUTION, art. II, § 1.

When women qualified to vote at town meeting: see TOWN LAW, § 55.

Personal property owner as qualified elector.— A person assessed for personal property, if otherwise qualified, is entitled to vote upon the proposition to incorporate as a village. Op. Atty.-Gen. (1898) 105.

Right of nonresident taxpayer to vote.— A nonresident has no right to vote on the question of the incorporation of a village even though he be the owner of taxable property within the territory proposed to be incorporated. Op. Atty.-Gen. (1903) 319.

Women as electors under former statute.—Under the former village law women were not entitled to vote on the question of village incorporation. See Op. Atty.-Gen. (1902) 158.

Cited.— This section was cited in Ward v. Kropf, (1910) 120 N. Y. S. 476, in connection with the question of the right of women to vote on the question of the incorporation of a village. See infra, § 301 note. It was cited in People v. Moir, (1908) 62 Misc. 35, 115 N. Y. S. 1029, in connection with the question as to the right of women to vote on the proposition to issue village water works bonds. See infra, § 41 note. It was also cited in Op. Atty.-Gen. (1909) 871, in connection with the question of the general qualifications of an elector upon the proposition to reincorporate a village. See infra, § 301 note.

§ 13. Ballot boxes where territory is in more than one town. If the proposed village is situated in more than one town, a separate ballot box shall be provided for each town, and the ballot of each person voting at such election shall be deposited in the ballot box assigned to the town in which he resides.

This section was derived from Village Law, L. 1897, ch. 414, § 13.

§ 14. Canvass of election. Immediately after the closing of the polls of the election the board of inspectors shall canvass the ballots cast thereat, and make and sign a certificate of the holding of the election and of the canvass, showing, if the territory is wholly within one town, the whole number of such ballots, the number for incorporation, and the number against incorporation; or if it includes parts of two or more towns, showing such facts separately as to each town. Within three days after the election, the inspectors shall file such certificate in the office of the town

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clerk with whom the proposition and other papers are filed. If the certificate shows that a majority of the votes cast at such election in each town included in the territory is against the proposition to incorporate, then no other election shall be held on such proposition within such town or towns within two years from the date of such election at which such proposition was voted down.

This section was derived from Village Law, L. 1897, ch. 414, § 14. It was amended by L. 1911, ch. 114, § 1. This amendment added the last sentence in the section.

Destroying or delaying election returns: see PENAL LAW, § 1429.

False election returns: see PENAL LAW, § 766.

Misconduct of election officers and watchers: see PENAL LAW, § 762.

Cited.— This section was cited in Matter of Sag Harbor, (1900) 32 Misc. 624, 67 N. Y. S. 574, in connection with the question of the qualification of voters at an election to determine the question of reincorporation of a village. See infra, § 301 note.

§ 15. Appeal from election. If the certificate shows that a majority of the votes cast at such election in each town included in the territory is in favor of incorporation, a person qualified to vote at such election may appeal therefrom to the county court of the county in which the proposition and other papers are filed.

This section was derived from Village Law, L. 1897, ch. 414, § 15.

Writ of certiorari to review incorporation proceedings.—A writ of certiorari will not lie to a village to review the proceedings taken for its incorporation. People v. Nelliston, (1879) 18 Hun 175, appeal dismissed (1879) 78 N. Y. 610. In this connection see Matter of Elba, (1883) 30 Hun 548.

Statutory remedy by appeal as exclusive.— The present section provides a summary way of determining the regularity and validity of proceedings incorporating a village, and is exclusive. The validity of such proceedings cannot be impeached by an action to recover damages for the conversion of property taken upon a levy to satisfy a village tax. Gardner v. Christian, (1893) 70 Hun 547, 24 N. Y. S. 339, 53 N. Y. St. Rep. 732.

§ 16. Notice of appeal and return. An appeal may be taken by serving a notice of appeal on the town clerk with whom the certificate of incorporation is filed, and by posting the same in five conspicuous places in such territory. The notice shall be signed by the appellant and must state briefly the grounds upon which the appeal is taken. It must be served and posted within ten days after the filing of the certificate of election.

The town clerk on whom the notice of appeal is served must, within five days thereafter, transmit to the county judge a certified copy of such notice of appeal and of the certificate of election.

This section was derived from Village Law, L. 1897, ch. 414, § 16.

§ 17. Hearing and decision of appeal. Upon such appeal the county court can only consider questions relating to the validity or regularity of the election. An appeal may be brought on for hearing by the service of a notice of argument by the appellant upon the town clerk, and by posting the same in five conspicuous

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places in such territory. The notice shall state the time of the hearing, which must be not less than ten days after the service and posting thereof. On such hearing, any number of qualified electors of the territory, not exceeding five, may appear in support of the validity or regularity of such election. The county court may take testimony, either orally or by affidavit, as it may determine. Such appeal must be heard and decided and the decision filed within thirty days after service of the notice of appeal; and the county court has no jurisdiction to consider the same after the expiration of that period. The county court may sustain or set aside the election. The decision must be filed by the county judge in the office of the town clerk on whom the notice of appeal was served. He shall also file a copy of the decision with the county clerk, together with the papers transmitted to him by the town clerk.

No costs shall be allowed to any party on such appeal.

This section was derived from Village Law, L. 1897, ch. 414, § 17.

§ 18. Appeal to appellate division. If the county court sustains the election, an appeal may be taken from such decision to the appellate division of the supreme court. Such appeal brings up for review all proceedings in the county court, and a case on appeal must be made and settled by the county judge as on an appeal from a judgment of the county court. Such appeal shall be taken within ten days after the filing of the decision, by the service of a notice of appeal upon the county clerk with whom a copy of the decision is filed, and upon each person who appeared in support of the election in the county court.

The proceedings for bringing on the appeal and the hearing and decision thereof by the appellate division are regulated by the code of civil procedure.

The appellate division may affirm the decision of the county court or reverse the same and set aside the election.

Within ten days after the determination of the appeal by the appellate division, a certified copy of its decision or order must be filed in the office of the town clerk with whom the proposition is filed.

No costs shall be allowed to any party on appeal to the appellate division.

This section was derived from Village Law, L. 1897, ch. 414, § 18.

§ 19. Stay on appeal. An appeal to the county court or to the appellate division stays all proceedings for the election of officers or otherwise in such proposed village until the determination of such appeal.

This section was derived from Village Law, L. 1897, ch. 414, § 19.

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§ 20. New election. If the election be set aside on appeal, a new election shall be held. The right to such an election shall be complete upon the filing of the decision on appeal with the town clerk. He shall thereupon give notice of another election. All the provisions herein contained regulating the first election apply to proceedings for a new election, including the service and posting of notices, the conduct of the election, the canvass and certification of the result, and appeals therefrom. A new election shall be held in like manner if any election is set aside on appeal.

This section was derived from Village Law, L. 1897, ch. 414, § 20.

Notice for second election under former statute.— It was held in People v. Snedeker, (1899) 160 N. Y. 350, 54 N. E. 659, affirming 30 App. Div. 1, 51 N. Y. S. 768, construing the village act of 1870 (as amended by L. 1878, ch. 59), that the second election to determine whether a village was to be incorporated, held after the first election had been declared illegal on appeal, might be had upon the order of the county judge and a notice signed by the inspectors of the previous election, without a notice signed by twenty assessable electors, as was required for the first election.

§ 21. When village deemed incorporated. If the territory is wholly within one town, and a majority of the votes cast is in favor of incorporation, or if it includes parts of two or more towns and a majority of the votes cast in each town is in favor of incorporation, then such territory shall become and be an incorporated village under this chapter from and after the date of such election, and upon the receipt by the supervisor of the town or towns in which the territory constituting the village is situated, of the certificate of the secretary of state under the seal of his office certifying that he has received and has placed on file in his office an outline map and description of the corporate limits of such village, certified as being true and correct by the supervisor of the town or towns in which the territory constituting such village is situated, together with the date of filing the same in his office. The certificate of the secretary of state herein required shall become a record of the village clerk's office, and the date of the filing of the map and description by the secretary of state shall complete the incorporation and be deemed the date of incorporation of such village, unless the election is set aside on appeal as herein provided.

This section was derived from Village Law, L. 1897, ch. 414, § 21, as amended by L. 1907, ch. 607, § 1.

§ 22. Report of incorporation. After ten and within fifteen days from the filing of the certificate of election, if no appeal has been taken, or within fifteen days after the filing of a final decision sustaining the election, the town clerk with whom such certificate is filed shall deliver a certified copy thereof to the secretary of state, [1]tax commission and to the county clerk of each

[1] "tax commission" new.

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county in which any part of such village is situated, together with a statement of the population of such village as it appears by the proposition for incorporation.

This section was derived from Village Law, L. 1897, ch. 414, § 22. It was amended by L. 1917, ch. 25, § 1. The amendment is shown in the footnote.

Cited.— This section was cited in People v. Lyman, (1900) 48 App. Div. 484, 62 N. Y. S. 902, affirmed (1900) 163 N. Y. 602, 57 N. E. 1120, in connection with the question of excise tax where a portion of an unincorporated village is included in an incorporated one. It was cited in Matter of Sag Harbor, (1900) 32 Misc. 624, 67 N. Y. S. 574, in connection with the question of the qualification of voters on the proposition to reincorporate a village. See infra, § 301 note.

§ 23. Compensation for services under this article. The following compensation is payable for services under this article:

1. To supervisors for services in connection with the proposition for incorporation, two dollars for each day actually and necessarily spent by them.

2. To town clerks, the compensation allowed by law for other similar services, and for services the compensation for which is not fixed by law two dollars for each day actually and necessarily spent by them.

3. To electors acting as inspectors of election, two dollars for each day actually and necessarily spent in such service.

This section was derived from Village Law, L. 1897, ch. 414, § 23.

§ 24. Payment of expenses if village not incorporated. If the incorporation of the proposed village be not effected by the proceedings authorized in this article, the fees and expenses of the town officers or other persons performing official services shall be paid from the fund deposited with the supervisor. If the persons making such deposit and the officers and persons entitled to compensation for services in such proceedings do not agree upon the amounts payable therefor, such fees and expenses shall be taxed by the county judge of the county in which the proposition was filed, and the amounts taxed by him shall be paid to the persons entitled thereto.

The remainder of the sum deposited, if any, or if the proceedings result in the incorporation of the village, the whole of such deposit, shall be returned to the persons making it by the supervisor on demand.

This section was derived from Village Law, L. 1897, ch. 414, § 24.

§ 25. Payment of expenses of incorporation. The following expenses incurred in the proceedings for incorporation shall be a charge against the village:

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1. The reasonable necessary expenses incurred by the persons signing the proposition prior to the delivery thereof to the supervisor.

2. If on appeal from the decision of the supervisor the proposition for incorporation be sustained, the reasonable necessary expenses of such appeal, not exceeding fifty dollars, incurred by the persons signing the proposition.

3. The fees payable to town officers and to electors acting as inspectors of election for services performed by them under this article and their necessary disbursements.

4. If on appeal from the certificate of election, showing that a majority of the votes cast at an election held under this article is in favor of incorporation, the election is finally sustained, the reasonably necessary expenses on such appeal, in both the county court and appellate division, incurred by those appearing in support of the validity or regularity of such election.

This section was derived from Village Law, L. 1897, ch. 414, § 25, as amended by L. 1905, ch. 404, § 1.

Costs on appeal: see supra, §§ 17, 18.

§ 26. First election of officers, when held. An election of officers of the village shall be held in either of the following cases:

1. After the lapse of ten days from the filing of the certificate of election showing the incorporation, unless an appeal has been taken therefrom.

2. If such an appeal has been taken, after the lapse of ten days from the filing of the decision of the county court sustaining the election, unless an appeal has been taken therefrom.

3. If an appeal has been taken from the decision of the county court, after the filing of the decision of the appellate division of the supreme court sustaining the election.

This section was derived from Village Law, L. 1897, ch. 414, § 26.

§ 27. Appointment of village clerk; inspectors of election. Within five days after the right of an election of officers is complete, the town clerk with whom the proposition for incorporation was filed shall appoint the following officers:

1. A village clerk, who shall serve until his successor is chosen.

2. Three qualified electors of the village to serve as inspectors of such election, not more than two of whom shall be members of the same political party.

The town clerk shall file such appointments in his office and deliver a copy thereof to each of the persons so appointed, who, within three days after their appointment, shall file with such town clerk the constitutional oath of office.

This section was derived from Village Law, L. 1897, ch. 414, § 27.

Acting in public office without having qualified: see PENAL LAW, § 1820.

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Form of constitutional oath: see CONSTITUTION, art. XIII, § 1.
Official oaths generally: see PUBLIC OFFICERS LAW, § 10 et seq.

§ 28. Notice of election of officers. Within five days after his appointment, the village clerk shall give notice for an election of officers. Such notice shall be posted in ten conspicuous places in the village and published in a newspaper therein, if any. It shall also contain the following particulars:

1. The place in such village where the election is to be held.
2. The date of such election, which shall be not less than ten nor more than fifteen days after the posting of such notice.
3. The hours for holding such election, which shall be for the space of at least four consecutive hours between ten o'clock in the forenoon and four o'clock in the afternoon.
4. The officers to be elected.

This section was derived from Village Law, L. 1897, ch. 414, § 28.
Certificate of nomination for village office: see ELECTION LAW, § 121.
Nomination of village officers: see ELECTION LAW, § 45.
Posting nominations: see ELECTION LAW, §§ 131, 132.

§ 29. Officers to be elected; terms of office. The following officers shall be chosen at such first election: A president, two trustees, a treasurer and a collector.

If such election be held after the date of an annual election under this chapter, and before the first day of October, the terms of all such officers shall expire at the end of the current official year. If such election be held after the thirtieth day of September, and on or before the date fixed for the next annual election, the president, one trustee, the treasurer and the collector shall hold their offices until the end of the next official year, and one trustee shall hold his office during the next two official years.

The terms of office of officers elected under this section commence as soon as they have qualified.

This section was derived from Village Law, L. 1897, ch. 414, § 29.
Acting in public office without having qualified: see PENAL LAW, § 1820.
Eligibility to office: see infra, § 42.
List of village officers, mode of choosing and terms of office: see infra, § 43.
Nomination of village officers and certificate of nomination: see ELECTION LAW, §§ 45, 121.
Number of trustees and changing number thereof: see infra, §§ 44, 45.
Official village year: see infra, § 43.

§ 30. Conduct of election. All persons qualified to vote at town meetings and who have been residents of the territory thirty days prior to such election may vote for such officers. The inspectors appointed by the town clerk or any two of them shall conduct such election. The provisions of this chapter relating to the election of village officers at an annual election, including the can-

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vass and certification of the result, apply to such first election, so far as practicable.

This section was derived from Village Law, L. 1897, ch. 414, § 30.
Illegal voting: see PENAL LAW, § 765.
Qualification of voter at town meeting: see TOWN LAW, §§ 53, 69.
Qualifications of voters generally: see CONSTITUTION, art. II, § 1.
When women entitled to vote at town meeting: see TOWN LAW, § 55.

§ 31. First meeting of board of trustees. Within five days after such first election, the president and trustees elected thereat shall meet and appoint a clerk and a street commissioner. They may also appoint such other officers as are authorized by law.

This section was derived from Village Law, L. 1897, ch. 414, § 31.

§ 32. Temporary loan for expenses. The board of trustees first elected may borrow not exceeding five hundred dollars upon the credit of the village for the purpose of raising funds to defray the expenses of incorporation, and such other necessary expenses as may be incurred before the collection of the first annual tax, and the amount so borrowed shall be included in the first tax levy.

This section was derived from Village Law, L. 1897, ch. 414, § 32.
Temporary loans by municipal corporation: see GENERAL MUNICIPAL LAW, § 5.
Cited.— This section was cited in Op. Atty.-Gen. (1902) 158, in connection with the question of the right of women to vote on the proposition of village incorporation. See supra, § 12 note.

§ 33. Incorporation where population is fifty or more and less than two hundred. A territory not exceeding one square mile situated entirely within a town, containing a population of fifty or more and less than two hundred, and not including a part of a city or village, may be incorporated as a village under this chapter upon complying with the provisions thereof, so far as the same are not inconsistent with this section, [1]if the proposition instituting the proceeding for the incorporation thereof be signed by ten adult freeholders residing in such territory, and if the consent to the proposition for incorporation be signed by owners of real property situated within such territory and constituting three-fourths in value thereof as assessed upon the last preceding assessment-roll, and if three-fourths of the votes cast at the election to determine the question of incorporation be in favor of incorporation. [2]All proceedings heretofore taken for the incorporation of a village wherein the provisions of this section, as hereby amended, have been complied with, are hereby legalized, confirmed and made effectual and valid.

New. Added by L. 1910, ch. 258, § 1. It was amended by L. 1913, ch. 658, § 1. The amendments are shown in the footnotes.

[1] " if the proposition . . . such territory, and " new.
[2] Remainder of section new.

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ARTICLE 3

Officers and Elections

Section 40. Classification of villages.
40-a. Change of classification.
41. Qualifications of voters.
42. Eligibility to office.
43. List of village officers; mode of choosing; official year; terms of office.
44. Number of trustees.
45. Changing number of trustees.
46. Election of trustees by wards.
47. Election of police justice.
48. Election of assessors.
49. Election districts.
50. Officers to be elected at annual election.
51. Inspectors of election.
51-a. Registration of voters.
52. Annual elections.
53. Canvass of annual election.
54. Failure to designate terms.
55. Special elections of officers.
56. Submission of propositions; special election.
56-a. Defeated propositions not to be submitted for one year.
57. Votes upon propositions to be by ballot.
58. Official undertakings.
59. Notice to person chosen to a village office.
60. Resignations and removals.
61. Filling of vacancies.
62. Refusal of officer to surrender his office.
63. Separate boards of commissioners.
64. Municipal boards; consolidation.
65. Continuance of separate boards.
66. Continuance of municipal board.
67. Abolition of separate or municipal boards.
68. Books and papers to be open to inspection.

§ 40. Classification of villages. Villages are divided into classes according to their population, as shown by the last enumeration, village, state or federal, as follows:

First class. Villages containing a population of five thousand or more.

Second class. Villages containing a population of three thousand and less than five thousand.

Third class. Villages containing a population of one thousand and less than three thousand.

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Fourth class. Villages containing a population of less than one thousand.

This section was derived from Village Law, L. 1897, ch. 414, § 40, as amended by L. 1906, ch. 602, § 2.

Provisions applicable to certain villages: see infra, § 310.

Provisions applicable to a village embracing the entire territory of a town: see infra, § 322.

Term "village" as meaning incorporated village: see GENERAL CONSTRUCTION LAW, § 54.

Cited.—This section was cited in People v. Lyman, (1900) 48 App. Div. 484, 62 N. Y. S. 402, affirmed (1900) 163 N. Y. 602, 57 N. E. 1120, in connection with the question of excise tax where a portion of an unincorporated village is included in an incorporated one.

§ 40-a. Change of classification. Whenever any village has a population as shown by the latest enumeration, village, state or federal, in excess of the population required to be a village of a certain class, and sufficient to entitle it to be a village of a higher class, the board of trustees of such village, by resolution duly adopted at a regular meeting or a special meeting of said board of trustees called for the purpose, shall cause a copy of such enumeration and resolution to be filed in the office of the secretary of state, and upon such filing and thereafter such village shall be a village of the class denoted by its population, and entitled to all privileges governing villages of such class.

New. Added by L. 1910, ch. 321, § 1.

§ 41. Qualifications of voters. A voter at a village election, other than the first, must possess the following qualifications:

1. To entitle him to vote for an officer, he must be qualified to vote at a town meeting of the town in which he resides, and must have resided in the village thirty days next preceding such election.

2. To entitle him to vote upon a proposition, he must be entitled to vote for an officer, and he must also be the owner of property in the village assessed upon the last preceding assessment-roll thereof. A woman who possesses the qualifications to vote for village officers, except the qualification of sex, who is the owner of property in the village assessed upon the last preceding assessment-roll thereof, is entitled to vote upon a proposition to raise money by tax or assessment, or for the dissolution [1]or change of name of the village, or for the borrowing of money upon the bonds or other obligations of the village, payable in future fiscal years, for the purpose of purchasing, constructing and maintaining the village improvements specified in section one hundred and twenty-eight.

This section was derived from Village Law, L. 1897, ch. 414, § 41, as amended by L. 1906, ch. 404, § 2. It was amended by L. 1910, ch. 135, § 1.

[1] "or change of name" new.

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by which the last part of subdivision 2 beginning with "or for the borrowing of money . . ." was added. It was further amended by L. 1915, ch. 499, § 1. The amendment is shown in the footnote.

Qualification of elector at town meeting: see TOWN LAW, §§ 53, 69.

When women qualified to vote at town meeting: see TOWN LAW, § 55.

Right of voting by joint owners of property.— Where the property on the assessment roll is owned jointly by two or more persons all the joint owners having the other statutory qualifications may vote on propositions at village elections. Op. Atty.-Gen. (1907) 571.

Right of trustee of property to vote.—A trustee in whom the legal title to the property on the assessment roll is vested may vote on village propositions if he possesses the other statutory qualifications. Op. Atty.-Gen. (1907) 571.

Property owned by other person at time of assessment roll.— An owner of property assessed on the last preceding assessment roll may, if he possesses the other statutory qualifications, vote on village propositions, although the property was owned by another person at the time of the last assessment roll. Op. Atty.-Gen. (1907) 571; Op. Atty.-Gen. (1903) 299; Op. Atty.-Gen. (1897) 239.

Equitable owners of realty as qualified voters.— Persons who occupy lands under contracts of sale where the lands are assessed on the roll in their names are qualified to vote on village propositions, so far as property qualifications are concerned. Op. Atty.-Gen. (1912) 328.

Right to vote of owner of property wrongly assessed to another.—A person who is the owner of property which is wrongly assessed to the name of a tenant or occupant or agent may, so far as property qualification is concerned, vote on village propositions. Op. Atty.-Gen. (1907) 571.

Right of property owning married woman and husband to vote.—A married woman may vote upon the proposition to provide for the extension of the waterworks system of a village where she has the qualifications to vote for village officers (except that of sex) and owns property assessed upon the last preceding assessment roll, but her husband may not vote upon the proposition unless he has the property qualification provided in the present section. Op. Atty.-Gen. (1911) 197. See also 8 St. Dept. Rep. 594.

Right of husband to vote under former statute.—A former statute conferred the qualification to vote on village propositions upon both a husband and wife where the wife was the owner of property assessed on the last preceding assessment roll, even though the husband was not such an owner. See Op. Atty.-Gen. (1904) 353; Op. Atty.-Gen. (1903) 299; Op. Atty.-Gen. (1903) 348.

Right of taxpayer to vote whose name has been omitted from assessment roll.—A taxpayer's right to vote is not affected by the fact that his name is not on the assessment roll because of the fault of the assessor. Op. Atty.-Gen. (1897) 245.

"Property" as inclusive of realty and personalty.—A person having the qualifications to vote for an officer and who is the owner of either real or personal property within the village assessed upon the last preceding assessment roll is entitled to vote upon village propositions. Op. Atty.-Gen. (1913) 466; Op. Atty.-Gen. (1907) 571. See also Op. Atty.-Gen. (1909) 871.

Exempt property on assessment roll as within statute.—A veteran's property purchased with pension money, placed upon the roll and later marked "exempt" by reason of the exercise of the privilege of exemption given pursuant to the statute in such cases, is not to be considered as property assessed upon the last preceding assessment roll as provided in the present section. Op. Atty.-Gen. (1911) 221; Op. Atty.-Gen. (1908) 539. Compare Op. Atty.-Gen. (1897) 239.

Constitutionality of limitation of village electorate.— It was held in Spitzer v. Fulton, (1902) 172 N. Y. 285, 64 N. E. 957, 92 A. S. R. 736, affirming 61 App. Div. 612, 69 N. Y. S. 1146, which affirmed 33 Misc. 257, 68 N. Y. S. 660, that a provision in a village charter declaring that in order to entitle a person to vote on a proposition submitted to the village electorate he must be entitled to vote for an officer and he or his wife must be the owner of taxable property in the village, was constitutional.

Proposition to expend money to establish water system as one to raise money by tax.— It was held in Waverly v. Waverly Water Works Co., (1910)

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69 Misc. 373, 125 N. Y. S. 339, that a resolution submitted to the voters of a village that the village should expend a certain sum in the purchase of an existing water supply system or in the establishment of a new one, contemplated that money should be raised by tax for the purpose of paying for the same, and women taxpayers were entitled to vote on the proposition.

Right of women to vote on question of bond issue.— It has been held that a proposition to establish waterworks and to issue bonds to pay for the same is a proposition "to raise money by tax or assessment," and that women are entitled to vote thereon. Gould v. Seneca Falls, (1910) 137 App. Div. 417, 121 N. Y. S. 723, affirming 118 N. Y. S. 648, affirmed (1910) 200 N. Y. 523, 93 N. E. 1121, distinguishing People v. Moir, (1908) 62 Misc. 35, 115 N. Y. S. 1029, affirmed 129 App. Div. 938, 115 N. Y. S. 1138. A similar ruling was made in Ward v. Kropf, (1910) 120 N. Y. S. 476, in relation to sewer bonds; and in Op. Atty.-Gen. (1911) 536, in relation to village bonds for street improvement.

This question appears to be effectually set at rest by the present reading of the statute, by which women taxpayers are given the right to vote on the question of bond issues for the various village improvements mentioned in section 128, infra.

Special charter provisions as taking precedence over general statutory provisions.—The provisions of special village charters governing qualifications of electors at village elections have not been repealed or altered by the provisions of the general village act on the subject, and the special charter provisions must govern. Op. Atty.-Gen. (1911) 175.

Village park Act of 1888 as affected by general statute limiting right to vote.— It was held in Scott v. Twombley, (1897) 20 App. Div. 535, 46 N. Y. S. 699, reversing 20 Misc. 652, 46 N. Y. S. 1084, that the Act of 1888 (L. 1888, ch. 525), now repealed, giving village trustees the power to acquire land for a park when authorized so to do by a majority of the "electors of the village" was not affected by the provision of the general village act that no one but a taxpayer should vote on a proposition to levy a tax or purchase property.

Cited.—This section was cited in Op. Atty.-Gen. (1902) 158, in connection with the question of the right of women to vote on the proposition of village incorporation. See supra, § 12 note. It was cited in New York, etc., Cement Co. v. Keator, (1901) 62 App. Div. 577, 71 N. Y. S. 185, affirmed (1903) 173 N. Y. 235, 66 N. E. 9, in connection with the question of the authority of a village to issue water bonds. See infra, § 128 note.

§ 42. Eligibility to office. A president or trustee, or a fire, water, light, sewer, cemetery or police commissioner must at the time of his election, be owner of property assessed to him on the last preceding assessment roll, and must also be the owner during the term of his office of property assessed to him on the assessment roll of said village; [1]except that in a village of the fourth class, such an officer must, at the time of his election or appointment and during his term, be the owner of property within such village assessed upon the last preceding assessment roll, and except that a president or trustee elected at the first village election must be the owner of property assessed upon the last preceding assessment roll. Any resident elector is eligible to any other village office. A resident woman, who is a citizen of the United States, and of the age of twenty-one years, is eligible to the office of village clerk or deputy clerk. A person shall not hold two village offices at the same time, except the offices of collector and

[1] "except that in a village of the fourth class . . . last preceding assessment roll, and" new.

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police constable or water and light commissioner; and except that village trustees may also be water commissioners.

This section was derived from Village Law, L. 1897, ch. 414, § 42, as amended by L. 1906, ch. 452, § 1. It was amended by L. 1913, ch. 53, § 1, which added "police" before "commissioner" near the beginning of the section. It was further amended by L. 1915, ch. 152, § 1. The amendment is shown in the footnote.

Acting in public office without having qualified: see PENAL LAW, § 1820.
Commencement of term of office: see PUBLIC OFFICERS LAW, § 4.
Holding over after expiration of term: see PUBLIC OFFICERS LAW, § 5.
Intrusion into public office: see PENAL LAW, § 1835.
Qualifications for holding office: see PUBLIC OFFICERS LAW, § 3.
Term "local officer" defined: see PUBLIC OFFICERS LAW, § 2.

Purpose of property qualification.—The purpose of the property qualification in the present section is to secure for village offices persons who are interested and by reason of their interest may be expected to be careful and economical in administering the affairs of the village. People v. Kanar, (1913) 80 Misc. 552, 141 N. Y. S. 641.

"Property" as inclusive of real and personal property.—The present section appears to make no distinction between personal property and real estate. A person, therefore, who is assessed for personal property only is eligible to the office of village trustee so far as property qualification is concerned. Op. Atty.-Gen. (1907) 555.

Time of ownership of property.—A person is eligible for election to the office of trustee of a villege, if, at the time of his election, he owns property actually assessed on the last preceding assessment roll of the village although such property was assessed therein to a former owner of the property. People v. Davis, (1904) 43 Misc. 397, 89 N. Y. S. 334; Jewell v. Mohr, (1912) 136 N. Y. S. 273. See also People v. Kanar, (1913) 80 Misc. 552, 141 N. Y. S. 641.

Equitable owner of property as eligible.—An equitable owner of property which is assessed on the last preceding village assessment roll has the necessary property qualification for the office of village trustee. Op. Atty.-Gen. (1903) 575. See also supra, § 41 note.

Joint ownership of property as sufficient property qualification.—A nominee for president of a village, who owns an undivided interest in the property assessed to him and another on the last preceding assessment roll, has the property qualification required by the present section. Op. Atty.-Gen. (1911) 226.

Eligibility of owner of stock in taxpaying corporation.— It has been ruled that one who at the time of his election to the office of president of a village is the owner of stock in a corporation whose personal property, real estate and franchises are assessed upon the last preceding assessment roll of the village, has the necessary property qualification for the office. Op. Atty.-Gen. (1906) 245.

Ownership of stock in company furnishing street lights as conferring property qualification.— It has been ruled that ownership of stock in an electric heat, light and power company which furnishes the street lights of a village does not confer the necessary property qualification to make a person eligible to the office of president of a village. Op. Atty.-Gen. (1911) 256. It does not appear in this case whether the stock was assessed on the last preceding assessment roll of the village. If it was the owner of the stock would have had the necessary property qualification under previous and subsequent rulings. See Op. Atty.-Gen. (1913) 466; Op. Atty.-Gen. (1907) 555; Op. Atty.-Gen. (1907) 571.

Eligibility to presidency of person resigning as trustee.— A village trustee who is elected village president is entitled to the latter office if he resigns the office of trustee before his term as president begins. People v. Mynderse, (1910) 140 App. Div. 789, 126 N. Y. S. 198, affirmed (1911) 201 N. Y. 524, 94 N. E. 1098. Compare People v. Purdy, (1897) 154 N. Y. 439, 48 N. E. 821, 61 A. S. R. 624, affirming 21 App. Div. 66, 47 N. Y. S. 601.

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President or trustee as eligible to position of health officer.—A president or trustee of a village is not prohibited by the present section from holding the position of health officer at the same time. Op. Atty.-Gen. (1910) 778.

Right of village clerk to perform duty of census taker.—A person who takes the village census is not an officer of the village, but merely an employee of the board of trustees for that purpose. A village clerk, therefore, may perform that service without bringing himself within the prohibition of the present section against a person holding two village offices at the same time. Op. Atty.-Gen. (1898) 76.

Right of person to act at same time as town constable, village policeman and collector.— It has been ruled that the same person may legally act as town constable, village policeman, and village collector. Op. Atty.-Gen. (1896) 123.

Right of same person to offices of assessor and back tax collector.— The same person cannot fill the village offices of assessor and back tax collector. Op. Atty.-Gen. (1916) reported in 10 St. Dept. Rep. 503.

Cited.—This section was cited in Op. Atty.-Gen. (1914) 116, in connection with the question of the eligibility of a taxpaying alderman whose name has been omitted from the general tax roll of the city.

§ 43. List of village officers; mode of choosing; official year; terms of office. Every village shall have a president, not less than two trustees, a treasurer, a clerk and a street commissioner. Except as herein provided, every village shall also have a collector, but a village of the first class may, upon the adoption of a proposition therefor at a special election [1]and a village of the second class may, upon the adoption of a proposition therefor at an annual or special election, determine that no collector shall thereafter be elected therein. A village of the first or second class may also have a deputy clerk, and any village may have a village engineer.

There shall be a board of health in each village, consisting of [2]the board of trustees of such village.[3] The president, trustees, treasurer, collector, police justice and assessors shall be elective officers, except that in a village of the first or second class the treasurer may be appointed, upon the adoption of a proposition therefor at a village election. All other village officers shall be appointed by the board of trustees, except as otherwise provided herein.

In all villages the offices of clerk and street commissioner may be elective, upon the adoption of a proposition therefor at a village election, and after the adoption of such a proposition, a proposition may be submitted for the appointment of such officers, at any subsequent village election. After a proposition has been adopted changing the method of filling such offices, another proposition changing such method shall not be submitted until after a period of two years from the adoption of such prior proposition.

[1] "and a village of the second class . . . at an annual or special election" new.

[2] "not less than three nor more than seven persons, appointed by" omitted.

[3] "in the manner provided by article three of the public health law" omitted.

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An "official year" begins at noon on the first Monday after the third Tuesday of March, and ends at noon on the same Monday in the next calendar year. The term of office of the president, treasurer, collector, clerk, street commissioner and inspectors of election shall be one official year; of each trustee elected for a full term, two official years, and of a police justice, four calendar years. The term of each village officer, except police justice, begins at noon on the first Monday after the annual election. A full term of the police justice begins on the first day of January succeeding the annual election at which he was elected. After the first election in a village subject to the provisions of this chapter one-half of the trustees shall be elected each year for a full term.

This section was derived from Village Law, L. 1897, ch. 414, § 43, as amended by L. 1901, ch. 155, § 1. It was amended by L. 1915, ch. 323, § 1. The amendments are shown in the footnotes.

Acting in public office without having qualified: see PENAL LAW, § 1820.
Commencement of term of office: see PUBLIC OFFICERS LAW, § 4.
Delivery of books and papers: see PUBLIC OFFICERS LAW, § 80.
Holding over after expiration of term: see PUBLIC OFFICERS LAW, § 5.
Intrusion into public office: see PENAL LAW, § 1835.
Meaning of term "year" in statute: see GENERAL CONSTRUCTION LAW, § 58.
Notice to persons chosen to village office: see infra, § 59.
Officer refusing to surrender to successor: see PENAL LAW, § 1836.
Official year: see infra, § 52.
President or trustee as health officer: see supra, § 42 note.
Refusal of officer to surrender his office: see infra, § 62.

Water commissioner as appointive officer.— Under the present section a village water commissioner is appointive and not elective. Canaseraga v. Green, (1903) 88 N. Y. S. 539.

Necessity of commission to street commissioners.— It is not necessary that a formal commission be issued to a street commissioner; the action of the board of trustees, evidenced by the resolution appointing him, is sufficient authority for him to act after his oath of office and bond are filed pursuant to the statute. Cotanch v. Grover, (1890) 57 Hun 272, 10 N. Y. S. 754. Under the Revised Statutes a commission to village officers appears to have been necessary. See People v. Willard, (1887) 44 Hun 580, 8 N. Y. St. Rep. 733, appeal dismissed (1888) 110 N. Y. 662, 18 N. E. 353.

Power of police justice to act pending qualification of successor.— It was ruled in Op. Atty.-Gen. (1897) 232, that a police justice of a village could not act after the expiration of his term and pending the qualification and installation of his successor, but that the appointment of an acting police justice during the interim might be made by the trustees of the village under section 187, infra.

Cited.—This section was cited in People v. Dobbs Ferry, (1901) 63 App. Div. 276, 71 N. Y. S. 578, in connection with the question of preference to honorably discharged soldiers in appointments by village trustees. It was cited in Op. Atty.-Gen. (1906) 429; Op. Atty.-Gen. (1903) 345, in connection with the construction of section 20 of the Public Health Law. It was cited in Matter of Board of Health, (1899) 43 App. Div. 236, 60 N. Y. S. 27, in connection with the question of filing oath of office by member of village board of health. It was also cited in Op. Atty.-Gen. (1902) 191, in connection with the subject of election of assessors. As to election of village assessors, see infra, § 48. The section was cited in Op. Atty.-Gen. (1907) 553, in connection with the question as to the term of office of a police justice elected to fill a vacancy.

As to filling of vacancies, see infra, § 61.

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§ 44. Number of trustees. Villages in the several classes shall elect trustees as follows:

1. In the first class, not less than two nor more than eight.
2. In the second class, not less than two nor more than six.
3. In the third or fourth class, two or four.

Each village shall always have an even number of trustees.

This section was derived from Village Law, L. 1897, ch. 414, § 44, as amended by L. 1901, ch. 7, § 1.

Quorum and majority: see GENERAL CONSTRUCTION LAW, § 41.

Cited.—This section was cited in Op. Atty.-Gen. (1898) 111, 134, in connection with the question as to the holding of a special election to determine the number of village trustees. As to changing number of trustees, see infra, § 45.

§ 45. Changing number of trustees. Within the limitations herein prescribed, the number of trustees may be changed by adopting a proposition therefor at a special election. If the number be increased, the additional trustees shall be elected at the next annual election. One-half of the additional trustees shall be elected for one year and one-half for two years. If the number of trustees be reduced, such reduction shall not take effect until the expiration of the terms of the trustees then in office.

This section was derived from Village Law, L. 1897, ch. 414, § 45.

Commencement of term of office: see PUBLIC OFFICERS LAW, § 4.

Registration of voters: see infra, § 51a.

Special election of officers: see infra, § 55.

Submission of petition and proposition for special election: see infra, § 56.

Times of filing independent certificates of nomination: see ELECTION LAW, § 128.

Necessity of special election to change number of trustees.—The number of village trustees cannot be changed except by a special election. Op. Atty.-Gen. (1903) 262.

§ 46. Election of trustees by wards. A village of the first or second class may elect trustees by wards upon the adoption of a proposition therefor at a special election. If such proposition be adopted, the board of trustees shall meet within twenty days thereafter and divide the village into wards of a number equal to one-half of the number of trustees which the village has a right to elect. Such wards shall contain a population as nearly equal as may be, and be of convenient and contiguous territory, in as compact form as practicable. The board of trustees shall make a certificate of such division, which shall contain a description of each ward, and shall file the same in the office of the village clerk, and publish it in each newspaper published in the village, at least twenty days before the next annual election. One trustee shall thereafter be elected annually in each ward, for a full term.

If after such division into wards the number of trustees in

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the village be changed, the board of trustees shall, in like manner, make a new division into wards.

This section was derived from Village Law, L. 1897, ch. 414, § 49, as amended by L. 1905, ch. 290, § 1.

Section 46 of the Village Law of 1897 was omitted in the consolidation of 1909.

Ballot boxes to be provided for each ward: see infra, § 52.

Division of village into primary districts: see ELECTION LAW, § 74.

Special elections and submission of propositions therefor: see infra, §§ 55, 56.

§ 47. Election of police justice. The office of police justice is continued in every village in which it is now established. A village may establish the office of police justice by adopting a proposition therefor. A village, in which the office of police justice has been established, may abolish such office at an annual election, to take effect upon the expiration of the term of the police justice then in office.

This section was derived from Village Law, L. 1897, ch. 414, § 50.

Section 47 of the Village Law of 1897 was omitted in the consolidation of 1909.

Expiration of term of police justice: see infra, § 351.

Filling vacancy in office of police justice: see infra, § 61 note.

Jurisdiction and compensation of police justices: see Code Crim. Pro., §§ 74, 78.

Removal of police justices: see Code Crim. Pro., §§ 12, 132.

Obligation to furnish police justice with office.— It was held in People v. Nyack, (1897) 18 App. Div. 318, 46 N. Y. S. 218, that a village was not compelled to furnish a police justice with an office.

Appointment of police justice after abolition of office.— Where at an annual village election the office of police justice is discontinued and abolished from and after the expiration of the term of the incumbent, and the latter in the interim resigns, the action of the village trustees in appointing another in his stead upon the theory that such resignation creates a vacancy in the office, is proper, and the appointee having duly qualified thereupon becomes the police justice of the village for the balance of the term of the prior incumbent, and his acts as such justice are legal and valid. People v. Bates, (1913) 81 Misc. 12, 142 N. Y. S. 893.

Cited.— This section was cited in People v. Lovell, (1897) 21 Misc. 573, 48 N. Y. S. 879, in connection with the construction of section 182, relating to criminal jurisdiction of village police justice. See infra, § 182 note. The statute embodying the present section was cited in People v. Lane, (1900) 53 App. Div. 531, 65 N. Y. S. 1004, in connection with the question of the powers of a police justice of a town.

§ 48. Election of assessors. The board of trustees shall act as assessors of the village, or may appoint of their number a committee for that purpose, unless separate assessors are appointed or elected as provided by this section. If twenty-five electors qualified to vote upon a proposition shall present a petition to the board of trustees for the election of separate assessors, it shall submit to the next annual election a proposition therefor, and if such proposition be adopted, shall appoint three persons to be assessors of such village for the terms of one, two and three years, respectively, and thereafter at each annual election one assessor shall be elected for a full term of three years, unless said petition

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shall be for the election of one assessor, and such proposition is adopted, in which case, the board of trustees shall appoint one person to be assessor of such village until the next annual election, at which election and each annual election thereafter, one assessor shall be elected for the term of one year. In a village of the first or second class, which now has no separate assessors, the board of trustees may, by resolution, direct that three assessors be elected at the next annual election, and they shall be elected accordingly for the terms of one, two and three years, respectively. At each annual election thereafter one assessor shall be elected for a full term of three years. A village having separate assessors, when this chapter takes effect, either elective or appointive, may continue to elect or appoint assessors until such village shall decide by a proposition submitted at an annual election to have the board of trustees, or a committee thereof, act as assessors. If twenty-five electors qualified to vote upon a proposition shall present a petition to the board of trustees to abolish separate assessors, it shall submit such proposition to the next annual election to which it is entitled to be submitted under this chapter, and if adopted no assessors shall be elected or appointed, except that such village shall continue to elect or appoint assessors whose terms of office shall expire with the term of the assessor then in office having the longest term to serve, after which time the trustees, or committee therefrom, shall act as assessors.

This section was derived from Village Law, L. 1897, ch. 414, § 51, as amended by L. 1907, ch. 82, § 1.

Section 48 of the Village Law of 1897 was omitted in the consolidation of 1909.

Commencement of term of office: see PUBLIC OFFICERS LAW, § 4.

Expiration of term of assessor: see infra, § 351.

Holding over after expiration of term: see PUBLIC OFFICERS LAW, § 5.

Submission of proposition as condition precedent to election of assessor.—The office of village assessor cannot be voted for and filled by election unless it shall have been previously determined to do so by the submission of a proposition to the electors of the village. Op. Atty.-Gen. (1902) 191.

§ 49. Election district. A village, containing not more than eight hundred qualified electors, shall constitute a single election district for village elections. If at an annual election the number of votes cast for village officers shall exceed eight hundred, the board of trustees may by resolution, adopted at least thirty days before the next annual election, divide such village into election districts, containing not more than eight hundred voters. Such resolution shall specify the boundaries of each district, but a ward shall not be divided in the formation thereof, except to make two or more election districts wholly within such ward. Such resolution shall be published and posted with a notice of such election.

This section was derived from Village Law, L. 1897, ch. 414, § 52.

Section 49 of the Village Law of 1897 is now covered by section 46.

Division of village into primary districts: see ELECTION LAW, § 74.

Registration in villages: see ELECTION LAW, §§ 158, 160, 161.

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§ 50. Officers to be elected at annual election. Elective offices shall be filled at the annual election next preceding the expiration of the terms thereof. If a vacancy in an elective office occurs more than ten days prior to an annual election, at which a successor for a full term is not to be chosen, it shall be filled at such election for the remainder of the unexpired term.

This section was derived from Village Law, L. 1897, ch. 414, § 53.

Section 50 of the Village Law of 1897 is now covered by section 47.

Application of statute prohibiting corrupt practices to village elections: see ELECTION LAW, § 561.

Certificate of nomination for village office: see ELECTION LAW, § 121.

Creation and filling of vacancies generally: see PUBLIC OFFICERS LAW, § 30 et seq.

Commencement of term of office and holding over after expiration of term: see PUBLIC OFFICERS LAW, §§ 4, 5.

Notice of vacancy to be filled at election: see ELECTION LAW, § 293.

Posting nominations: see ELECTION LAW, §§ 131, 132.

Cited.— This section was cited in Op. Atty.-Gen. (1913) 178, in connection with the question of filling of vacancies in office of village trustees. See infra, § 61 note. It was cited in Op. Atty.-Gen. (1907) 553, in connection with the question as to the term of office of a police justice elected to fill a vacancy.

As to filling of vacancies, see infra, § 61.

§ 51. Inspectors of election. If a village constitutes but one election district, [1]and a proposition for the registration of voters has not been adopted pursuant to section fifty-one-a of this chapter, the trustees, president and clerk of the village, after the first election of village officers, or such of them as are in office when an election takes place, shall be inspectors of election for the village, and one or more of them shall preside at all elections. If neither a trustee, the president nor the clerk shall be present, the electors may appoint a chairman to preside, who shall have all the powers of an inspector. If a village is divided into election districts and a proposition for the registration of voters has not been adopted pursuant to section fifty-one-a of this chapter, the board of trustees shall, annually, at least thirty days before the annual election, appoint two inspectors of election for each district to preside at all village elections therein, until their successors are appointed. Such inspectors shall not both be chosen from the same political party. The board may also appoint for each district a poll clerk and a ballot clerk. [2] If a proposition for the registration of voters has been adopted in any village pursuant to section fifty-one-a of this chapter, the president of the village shall, annually, at least twenty days before the annual election, appoint four inspectors of election for such village, or if the village constitutes more than one election district, four inspectors of election for each election district, to preside at all village elections until their successors are appointed. Such appointments shall

[1] "and a proposition . . . pursuant to section fifty-one-a of this chapter" new.

[2] Remainder of section new.

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be made from lists prepared, certified and filed with the village clerk by the two political parties entitled under the election law to representation on a board of election officers, if any such lists shall have been filed as hereinafter provided. The village committee of the party casting the highest number of votes and the village committee of the party casting the next highest number of votes at the last preceeding general election may each prepare a list containing the names of at least two persons qualified to serve as inspectors of election, for each election district in such village, which list shall be certified by the chairman of such committee, and filed with the village clerk. From each of the two lists so filed, if filed the president of the village shall appoint two persons who possess the qualifications prescribed by law for election officers. If in any village more than one such list be submitted on behalf or in the name of the same political party, only that list can be accepted which is certified by the proper officer or officers of the faction of such party which was recognized as regular by the last preceding state convention of such party; or if no such convention was held during the year, by the proper officer or officers of the faction of such party, which at the time of the filing of such list is recognized as regular by the state committee of such party. From the additional names, if any, contained on the list so filed, of persons qualified to serve as such, the president of the village shall appoint inspectors of election in case of resignation, declination or other incapacity of persons appointed to such office. If such lists contain no additional names of such persons, the president of the village shall fill vacancies by appointing persons known, or proved to his satisfaction, to be members of the same political party in which such vacancy occurred.

This section was derived from Village Law, L. 1897, ch. 414, § 54, as amended by L. 1904, ch. 100, § 1. It was amended by L. 1910, ch. 423, § 2. The amendments are shown in the footnotes.

Section 51 of the Village Law of 1897 is now covered by section 48.

Certification of statement of result: see ELECTION LAW, § 79.

Challenge of voters: see ELECTION LAW, §§ 173, 361.

Custody of enrollment books and register: see ELECTION LAW, §§ 12, 178.

Examination and distribution of ballot boxes: see ELECTION LAW, §§ 84, 373.

False returns: see PENAL LAW, § 766.

Illegal voting: see PENAL LAW, § 765.

Meetings to be public: see ELECTION LAW, § 315.

Misconduct of election officers and watchers: see PENAL LAW, § 762.

Misdemeanor in relation to elections: see PENAL LAW, § 764.

Number in each district: see ELECTION LAW, § 302.

Qualifications of inspectors: see ELECTION LAW, § 302.

Power of inspectors of election to keep order: see ELECTION LAW, § 315.

Organization of board of inspectors: see ELECTION LAW, § 314.

Vacancies in office: see ELECTION LAW, § 313.

Candidate as inspector.—Where a village constitutes but one election district the president and trustees of the village are inspectors of election, and neither the president nor a trustee is prohibited from acting as such inspector at a village election at which he is a candidate. Op. Atty.-Gen. (1911) 543.

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Village bonds as affected by irregularities in appointment of inspectors.—It has been held that village bonds will not be invalidated by reason of irregularities in the appointment of inspectors of election on the proposition of issuing the bonds. Ward v. Kropf, (1910) 120 N. Y. S. 476.

Cited.—This section was cited in Matter of Frame, (1910) 69 Misc. 568, 127 N. Y. S. 752, in connection with the construction of section 53. See infra, § 53 note.

§ 51-a. Registration of voters. A village may adopt, at an annual or special election in the manner provided in this chapter for the submission of propositions, a proposition for the registration of voters at elections in such village as provided by this section, and thereafter the provisions of section one hundred and sixty-one[1] of the election law that no registration shall be required for village elections shall not apply to such village. If such proposition be adopted the inspectors of election of each election district of such village shall meet on the tenth day preceding each election in such village at the place in such election district where the election is to be held, [1]and at such hours as the board of trustees or such members thereof as are in office, shall by resolution adopted at least twenty days before every registration day designate, which shall include at least four consecutive hours between sunrise and eight o'clock in the evening, for the purpose of preparing a register for such election, which shall, so far as practicable, be in the same form as the register of voters in such election district for the last preceding general election. The town clerk of the town shall, upon application, deliver to such inspectors the register of the last preceding general election in any election district in which such election district is wholly or partly situated. Such inspectors shall, for the annual village election, prepare a register for their election district by copying from the town register the names of all persons qualified to vote at such election in such district which appear upon the register of voters for the last preceding general election in such election district, except the names of such voters as are proven to the satisfaction of such inspectors to have ceased to be voters in such district since their names were placed upon such register, and shall add to such register the names of all persons known or proven to the satisfaction of such inspectors to be then or thereafter entitled to vote at the election for which such registration is made. Such inspectors shall in like manner prepare a register for each special election in such village, except that the register for the annual election in such village shall be used by them as the basis therefor. All the provisions of the election law in relation to the registration of voters shall, so far as practicable, apply to the registration provided for by this section. The village clerk shall furnish the necessary blank books and blanks at the expense of such village. Elections in such village shall be con-

[1] "and at such hours . . . in the evening" in place of former reading: "from four o'clock in the afternoon until eight o'clock in the evening."

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ducted in the manner provided by this chapter and the election law, except that no person shall be entitled to vote thereat whose name does not appear upon the register of the election district in which he claims to be entitled to vote.

New. Added by L. 1910, ch. 423, § 1. It was amended by L. 1911, ch. 427, § 1. The amendment is shown in the footnote.

Disqualification of convict to vote: see ELECTION LAW, § 175.

False registration: see PENAL LAW, § 752.

Illegal voting: see PENAL LAW, § 765.

Misconduct of registry officers: see PENAL LAW, § 753.

Presenting fraudulent certificates to registry boards to procure registration: see PENAL LAW, § 778.

Procuring fraudulent certificates in order to vote: see PENAL LAW, § 777.

Registration in villages: see ELECTION LAW, §§ 158, 160, 161.

Registration of voters generally: see ELECTION LAW, art. 6.

Necessity of registration of women voters.— It has been ruled that women otherwise entitled to vote on propositions at special village elections are not required to register. Op. Atty.-Gen. (1912) 134.

§ 52. Annual elections. An annual election shall be held in the village on the third Tuesday in March, unless a town meeting of a town in which any part of the village is situated, or a general election, shall be held on such day, in which case the annual election shall be held upon the next day thereafter. All other village elections are special elections. A village of the second, third or fourth class may by the adoption at an annual or special election of a proposition therefor, hold its annual election on the third Tuesday in June, unless a town meeting of a town in which any part of the village is situated, or a general election, shall be held on such day, in which case the annual election shall be held upon the next day thereafter. A special election for the adoption of such a proposition may be held at any time. The official year in such village shall begin at noon on the first Monday after the said election. All villages which have heretofore by resolution duly adopted designated any other Tuesday in June for their annual election shall hereafter hold such annual election on the third Tuesday of June except as above stated. The board of trustees or such members thereof as are in office shall by resolution, adopted at least ten days before every village election, designate the hours of opening and closing the polls thereof, which shall include at least four consecutive hours between sunrise and eight o'clock in the evening. The resolution shall also designate the place of holding the election, or if there is more than one election district in the village, the place of holding the election in each district. The board or such members thereof as are in office also shall, at least ten days before the election, cause notice thereof to be published at least once in the official paper, if such paper is published in the village, and a printed copy thereof conspicuously posted in at least six public

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places in the village, specifying the time and place or places of holding the election, the hours of opening and closing the polls thereof, the offices, if any, and the term to be filled, and setting forth in full all propositions to be voted upon. If the board or such members thereof as are in office neglects to appoint the place or places for the annual election, the election shall be held at the place or places of the last preceding annual election, and if it neglects to appoint the hours of opening and closing the polls thereof, such hours shall be the same as at the last preceding annual election. An annual election of the village officers shall not be invalid because of a failure to give such notice. A vote upon a proposition shall be void unless due notice of the election has been given. If a village, constituting a single election district, is divided into wards and elects trustees by wards, separate ballot boxes shall be provided for each ward, and the ballots of the electors residing therein shall be deposited in the ballot box designated for such ward.

This section was derived from Village Law, L. 1897, ch. 414, § 55, as amended by L. 1905, ch. 290, § 2. It was amended by L. 1909, ch. 472, § 1.

Section 52 of the Village Law of 1897 is now covered by section 49.

Application of statute against corrupt practices to village elections: see ELECTION LAW, § 561.

Ballots and stationery: see ELECTION LAW, § 330 et seq.

Certificate of nomination for village office: see ELECTION LAW, § 121.

Nomination of village officers: see ELECTION LAW, § 45.

Notice to person chosen to a village office: see infra, § 59.

Official year: see supra, § 43.

Posting nominations: see ELECTION LAW, §§ 131, 132.

Use of voting machines: see ELECTION LAW, § 390 et seq.

Law governing village elections.—The Village Law and not the Election Law governs the conduct of village elections. Op. Atty.-Gen. (1896) 93.

What constitutes "due notice of the election."—"Due notice of the election," as specified in the present section, includes the posting of the six printed copies of the notice as well as the publication thereof in the village paper at least ten days prior to the election, and if either step is omitted the vote upon a submitted proposition is void. Op. Atty.-Gen. (1916) 232, 8 St. Dept. Rep. 516.

Special act fixing time of annual election as repealed by general act.—It was held in People v. Shaw, (1898) 25 App. Div. 147, 49 N. Y. S. 127, that the general Village Law of 1897 (L. 1897, ch. 414) repealed the special act of 1893 (L. 1893, ch. 145) relating to the village of Sea Cliff fixing the time of the annual election in that village.

Cited.—This section was cited in Op. Atty.-Gen. (1914) 365, in connection with the construction of section 45 of the County Law relating to referendum on the question of a county tuberculosis hospital. It was cited in Canandaigua v. Hayes, (1904) 90 App. Div. 336, 85 N. Y. S. 488, in connection with the question of the validity of village street improvement bonds. See infra, § 128 note.

§ 53. Canvass of annual election. The inspectors of election of each election district shall, immediately upon the closing of the polls of each annual election, proceed to canvass the votes cast thereat, and shall complete such canvass without adjournment. They shall, before nine o'clock in the forenoon of

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the following day, file with the village clerk their certificate setting forth the holding of the election, the total number of votes cast for each office, the number of votes cast for each person for such office, the total number of votes cast upon each proposition voted upon, and the number cast for and against it. If the village contains more than one election district, the board of trustees of such village shall meet at its usual place of meeting, at nine o'clock in the forenoon of the next day after the election. The village clerk shall produce at such meeting the returns of the inspectors of election, and the board of trustees shall canvass such returns, and file in the office of the village clerk a certificate declaring the result. The person eligible and receiving the highest number of votes for an office shall be elected thereto. If two or more persons receive an equal and the greatest number of votes for the same office, the board of trustees shall determine by lot which of them shall be deemed elected.

This section was derived from Village Law, L. 1897, ch. 414, § 56.

Section 53 of the Village Law of 1897 is now covered by section 50.

Conduct of elections and canvass of votes: see ELECTION LAW, § 350 et seq.

False election returns: see PENAL LAW, § 766.

Judicial investigation of ballots: see ELECTION LAW, § 381 note.

Functions of inspectors.—The inspectors of election are not clothed with judicial functions. Their duties are confined to canvassing the votes cast—setting forth in their certificate the total number of votes cast for each office and the number of votes cast for each person for the office. They have no power to disregard a single vote, or to consider the eligibility of a candidate, or to declare the election of any candidate. People v. Davis, (1903) 43 Misc. 397, 89 N. Y. S. 334.

Constitutionality of provision for determination by lot.—The provision of the statute for the selection of a village officer by the board of trustees by lot in case of a tie vote does not contravene the provisions of section 2 of article X of the state constitution, which requires all village officers whose election or appointment is not provided for by the constitution to be elected by the electors of such village or of some division thereof, or appointed by such authorities thereof as the legislature shall designate. Matter of Frame, (1910) 69 Misc. 568, 127 N. Y. S. 752.

Failure of board to determine by lot.—Where, upon the canvass of the votes cast at an annual election of village officers, two different persons are found to have received an equal number of votes for the office of village president, and the board of trustees then in office neglects to determine by lot which of the two persons shall be deemed elected, in pursuance of the present section, until the expiration of the term of office of such board, their successors in office may thereafter perform such duty, and the old board may not be ordered to reassemble for such purpose. Matter of Frame, (1910) 69 Misc. 568, 127 N. Y. S. 752.

Cited.—This section was cited in Op. Atty.-Gen. (1912) 369, in connection with the construction of section 131. See infra, § 131 note. It was cited in People v. Mynderse, (1910) 140 App. Div. 789, 126 N. Y. S. 198, affirmed (1911) 201 N. Y. 524, 94 N. E. 1098, in connection with the construction of section 42. See supra, § 42 note.

§ 54. Failure to designate terms. No election of village officers, heretofore or hereafter held in any village, shall be invalid on account of the failure of the electors to designate in their ballots the respective terms of office of persons to be elected

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thereat, for the same office, for different terms; but the persons so to be elected to such office, who are eligible and receive the highest number of votes, shall be elected. The person first named on a ballot containing the names of more than one person for such an office, and not designating their respective terms, shall be deemed designated for the longest term, the second, for the next longest term, and so on to the end; and the inspectors of election shall count the ballots and certify the result accordingly. If the votes shall not be so counted and canvassed the board of trustees shall, at least twenty days before the expiration of the shortest term, determine by lot which of such officers shall hold office for each term, and thereupon such officers shall be deemed to have been elected accordingly.

This section was derived from Village Law, L. 1897, ch. 414, § 57.
Section 54 of the Village Law of 1897 is now covered by section 51.
Commencement of term of office: see PUBLIC OFFICERS LAW, § 4.
Terms of office: see supra, § 43.
Cited.—This section was cited in Matter of Frame, (1910) 69 Misc. 568, 127 N. Y. S. 752, in connection with the construction of section 53. See supra, § 53 note.

§ 55. Special elections of officers. Whenever the day fixed by law for an annual election shall have passed, and no election shall have been held thereon, the board of trustees shall, forthwith, give notice of a special election, to be held at the place of the omitted annual election. Such notice shall be given in like manner as a notice of an annual election, and a special election shall be held in the same manner as, and for the purposes of, an annual election. For the purpose of determining the terms of office of the officers elected thereat, the time therefrom to the beginning of the next official year shall be deemed one year. Whenever vacancies shall occur in the board of trustees so that a majority of the members thereof are not in office, the members of such board as are in office shall forthwith cause a special election to be held for the purpose of filling such vacancies. Such special election shall be held in the same manner as an annual election, and notice thereof shall be given by the members of such board as are in office in like manner as for an annual election. If the offices of all the trustees and the president are vacant, the clerk shall cause such special election to be held and shall give notice thereof as above provided. If the office of clerk is also vacant, a special election to fill such vacancies shall be held upon the call of at least twenty-five taxpayers residing in such village, who shall sign a notice therefor stating the time and place where such special election shall be held, and at least ten days before such date so named cause the same or copies thereof to be posted in six or more conspicuous places in such village and to be published in a newspaper published in said village if there be one. The officers

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elected at such special election shall immediately enter upon the duties of their offices and shall hold such offices for the unexpired terms of their predecessors. A special election under this section shall not be held during the months of February and March.

This section was derived from Village Law, L. 1897, ch. 414, § 58, as amended by L. 1904, ch. 100, § 2.

Section 55 of the Village Law of 1897 is now covered by section 52.

Creation of vacancies: see PUBLIC OFFICERS LAW, § 30 et seq.

Filling of vacancies: see infra, § 61.

Term "majority" defined: see GENERAL CONSTRUCTION LAW, § 41.

Right of taxpayer to mandamus trustees to call special election.—A voter and taxpayer of a village map compel, by mandamus, village trustees to call a special election to fill a vacancy in the board of trustees. People v. Whitestone, (1893) 71 Hun 188, 24 N. Y. S. 532.

§ 56. Submission of propositions; special election. The board of trustees may, upon its own motion, and shall, upon the petition of twenty-five electors qualified to vote upon a proposition, cause to be submitted at a village election a proposition upon any question which may be lawfully decided thereat. A separate board of fire, water, light, sewer, cemetery or other commissioners may present to the board of trustees a petition, requesting the submission of a specified proposition, relating to its department, at a village election. Upon the presentation of such petition, the board of trustees shall cause the proposition to be submitted accordingly. If a petition under this section be presented after the annual election and before the first day of January following, a special election shall be called, to be held not less than ten nor more than twenty days after the presentation of such petition. If a petition be presented at any other time, and more than ten days prior to the annual election, the proposition shall be submitted at such annual election. Except for the purpose of fixing or changing the number of trustees, or for the purpose of determining whether an officer shall be thereafter elected or appointed, [1]or the submission of a proposition to pay the additional expense of a state or county highway through the village, no special election shall be held in the months of February or March. The foregoing provisions in this section contained in respect to the time of presentation of a petition under this section and prohibiting a special election in February or March, shall not apply to villages which hold their annual election in June, but in such a village the board of trustees may, upon its own motion, submit a proposition at a special village election in April, and if such a petition be presented after the annual election, and before the first day of April following, a special election shall be called in the manner hereinbefore provided; but

[1] "or the submission of a proposition to pay the additional expense of a state or county highway through the village" new.

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if a petition be presented at any other time and more than ten days prior to the annual election, the proposition shall be submitted at such annual election. Except for the purpose of fixing or changing the number of trustees, or for the purpose of determining whether an officer shall be thereafter elected or appointed, or the submission of a proposition to pay the additional expense of a state or county highway, no special election shall be held in such a village in the month of May or June. Notice of a special election for the submission of a proposition shall be given in the same manner as for an annual election. Such special election shall be held by the same officers, and conducted and the result canvassed in the same manner as an annual election.

This section was derived from Village Law, L. 1897, ch. 414, § 59, as amended by L. 1906, ch. 57, § 1. It was amended by L. 1910, ch. 4, § 1. The amendment is shown in the footnote.

Section 56 of the Village Law of 1897 is now covered by section 53.

Women as entitled to present petition.— It was ruled in Op. Atty.-Gen. (1901) 198, that women were not entitled to sign or present a petition for the submission of a proposition under the present section.

Proposition to assume unauthorized debt created by village board.—Where members of a village board have made themselves personally liable by creating an unauthorized debt against the village, but the village has had the benefit of the unauthorized expenditures, the village may waive the personal liability, call a special election and submit to the voters the proposition to have the village assume the indebtedness; and if the proposition carries the amount thus appropriated may be included in the annual tax levy as provided by section 110, infra. Op. Atty.-Gen. (1909) 903.

Cited.—This section was cited in Op. Atty.-Gen. (1912) 369, in connection with the construction of section 131. See infra, § 131 note. It was cited in Canandaigua v. Hayes, (1904) 90 App. Div. 336, 85 N. Y. S. 488; New York, etc., Cement Co. v. Davis, (1901) 62 App. Div. 577, 71 N. Y. S. 185, affirmed (1902) 173 N. Y. 235, in connection with the question of the validity of village improvement bonds. See infra, § 128 note. This section was also cited in Op. Atty.-Gen. (1898) 111, in connection with the question of holding a special election to determine the number of village trustees. As to changing number of trustees, see supra, § 45.

§ 56-a. Defeated propositions not to be submitted for one year. Any proposition submitted in pursuance of section fifty-six of this chapter and which has been defeated by a vote of the electors shall not again be submitted to such electors until after the expiration of one year, or until the next annual village election.

New. Added by L. 1917, ch. 541, § 1.

§ 57. Votes upon propositions to be by ballot. All votes upon a proposition submitted at a village election shall be by ballot; and, unless otherwise provided, the provisions of the election law, relating to ballots, apply to propositions submitted under this chapter.

This section was derived from Village Law, L. 1897, ch. 414, § 60.

Section 57 of the Village Law of 1897 is now covered by section 54.

Form of ballot for questions submitted: see ELECTION LAW, § 332.

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Submission of different propositions.—The provisions of the Election Law which require different propositions to be separately stated, etc., apply to the submission of propositions at a village election. Op. Atty.-Gen. (1902) 263; Op. Atty.-Gen. (1896) 110. See ELECTION LAW, § 294 note.

Cited.—This section was cited in Everett v. Potsdam, (1906) 112 App. Div. 727, 98 N. Y. S. 963, in connection with the question of the legality of the submission of a proposition to establish a village lighting plant.

As to election for lighting system, see infra, § 241.

This section was also cited in New York, etc., Cement Co. v. Keator, (1901) 62 App. Div. 577, 71 N. Y. S. 185, affirmed (1903) 173 N. Y. 235, 66 N. E. 9, in connection with the legality of the submission of a proposition to issue bonds for the establishment of a village water system.

As to the establishment of village waterworks, see infra, § 221 et seq.

The present section was cited in Canandaigua v. Hayes, (1904) 90 App. Div. 336, 85 N. Y. S. 488, in connection with the question of the validity of village street improvement bonds. See infra, § 128 note.

The statute embodying the present section was cited in Mead v. Turner, (1909) 134 App. Div. 691, 119 N. Y. S. 526, affirming 60 Misc. 145, 112 N. Y. S. 127, in connection with the construction of section 260 relating to the establishment of village sewer system. See infra, § 260 note.

§ 58. Official undertakings. The treasurer, collector, police justice, street commissioner, and such other officers as may be required by the board of trustees, shall, before they enter upon the duties of their respective offices, each execute to the village and file with the village clerk an official undertaking in such sum and with such sureties as the board of trustees shall direct and approve. The board of trustees may at any time require any such officer to file a new official undertaking for such sum and with such sureties as the board shall approve.

This section was derived from Village Law, L. 1897, ch. 414, § 61.

Section 58 of the Village Law of 1897 is now covered by section 55.

Acting in public office without having qualified: see PENAL LAW, § 1820.

Acts of officer de facto: see PENAL LAW, § 1821.

Official undertakings generally: see PUBLIC OFFICERS LAW, § 11 et seq.

Refusal to file undertaking as creating vacancy in office: see PUBLIC OFFICERS LAW, § 30, subd. 7.

Undertaking as equivalent to bond: see GENERAL CONSTRUCTION LAW, § 14.

Validity of bond running to trustees.— It has been held that a village collector's bond is a valid and binding instrument although it runs "to the trustees or their successors in office," instead of to the village by its corporate name. Warren v. Phillips, (1860) 30 Barb. 646.

Validity of additional treasurer's bond.—Under the present section a village board of trustees has the power, after the approval of a village treasurer's bond, to exact the giving of another and concurrent or additional bond, and where the same is accepted and approved by formal resolution of the board it is valid, even though the action of the board in requiring it is informal and without evidential record in the minute book of the village. Bath v. McBride, (1913) 81 Misc. 618, 142 N. Y. S. 1014.

Right of trustees to pay premiums on collector's bond.—A village board of trustees has no authority to pay the premiums upon the bond of the collector. Op. Atty.-Gen. (1911) 412.

§ 59. Notice to person chosen to a village office. The clerk of the village shall, within three days after the election or appointment of a village officer, except the first election or appointment after the incorporation of the village, notify each per-

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son elected or appointed of his election or appointment and of the date thereof, and that he is required to file his oath of office with such clerk before entering upon the duties thereof, and, if an official undertaking be required of him, by or in pursuance of law, that he is also required to file the same with such clerk, and that upon his failure so to do, he will be deemed to have declined the office. If an undertaking is required of a village officer, by or in pursuance of law, after entering upon the duties of his office, the clerk of the village shall thereupon serve upon such officer, personally, a written notice that he is required to file such undertaking with the clerk, within ten days after the service of the notice, and that upon his failure to do so, his office will become vacant.

This section was derived from Village Law, L. 1897, ch. 414, § 62.
Section 59 of the Village Law of 1897 is now covered by section 56.
Acts of officer de facto: see PENAL LAW, § 1821.
Acting in public office without having qualified: see PENAL LAW, § 1820.
Form of constitutional oath: see CONSTITUTION, art. XIII, § 1.
Official oaths and undertakings generally: see PUBLIC OFFICERS LAW, § 10 et seq.
Refusal or neglect to file oath or undertaking as creating vacancy in office: see PUBLIC OFFICERS LAW, § 30, subd. 7.
Filing of oath of member of board of health.— It was held in Matter of Board of Health, (1899) 43 App. Div. 236, 60 N. Y. S. 27, that a member of a village board of health was a village officer, and therefore his official oath should be filed with the village clerk. See also People v. Scott, (1900) 31 Misc. 131, 64 N. Y. S. 970, affirmed 57 App. Div. 630, 68 N. Y. S. 1146.

§ 60. Resignations and removals. A village officer may resign to the board of trustees, and his resignation shall take effect upon the delivery thereof to the village clerk, unless a time be specified in such resignation for its taking effect thereafter, in which case, such resignation shall take effect at the time so specified.

In addition to the method provided by the public officers law, an officer, except a president or trustee, appointed by the board of trustees of the village, may be removed by the board for misconduct, on notice to such officer and an opportunity given him to make his defense.

This section was derived from Village Law, L. 1897, ch. 414, § 63.
Section 60 of the Village Law of 1897 is now covered by section 57.
Removal of village officer by court: see PUBLIC OFFICERS LAW, § 36.
To whom public officers may resign: see PUBLIC OFFICERS LAW, § 31.
Cited.—This section was cited in People v. Bates, (1913) 81 Misc. 12, 142 N. Y. S. 893, in connection with the question of the appointment of a village police justice after abolition of the office. See supra, § 47 note.

§ 61. Filling of vacancies. Vacancies occurring otherwise than by expiration of term in a village office, other than that of health officer, shall be filled by the board of trustees, if the office be elective, until the end of the current official year, but if the office be appointive, for the balance of the unexpired term. If

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a vacancy in an elective office occurs within less than ten days prior to an annual election, and such office is not to be filled at such election, the appointment shall be for a term which will expire at the end of the next official year.

This section was derived from Village Law, L. 1897, ch. 414, § 64.
Section 61 of the Village Law of 1897 is now covered by section 58.
Creation of vacancies: see PUBLIC OFFICERS LAW, § 30.
Notice of existence of vacancy: see PUBLIC OFFICERS LAW, § 37.
Terms of officers chosen to fill vacancies: see PUBLIC OFFICERS LAW, § 38.
Vacancy in office occurring exactly ten days before an election.— It was ruled in Op. Atty.-Gen. (1913) 178, that a vacancy in the office of village trustees occurring exactly ten days before an election should be filled by the board of trustees and not by the governor, under section 42 of the Public Officers Law, relative to the power of the governor to fill vacancies where no other provision of law is made for filling the same.

§ 62. Refusal of officer to surrender his office. If a person who has been an officer of a village refuses or neglects to deliver to his successor in office, within ten days after notification and request, all the moneys, books, papers, records, property and effects of every description, which have come into his possession or under his control by virtue of his office, and belonging to the village or appertaining to the office, he shall forfeit and pay to the village the sum of twenty-five dollars for each and every day he shall so neglect or refuse, and also all damages, costs and expenses caused by such neglect or refusal.

This section was derived from Village Law, L. 1897, ch. 414, § 65.
Section 62 of the Village Law of 1897 is now covered by section 59.
Delivery of books and papers: see PUBLIC OFFICERS LAW, § 80.
Officer refusing to surrender to successor: see PENAL LAW, § 1836.

§ 63. Separate boards of commissioners. A village which has no separate board of fire, water, light, sewer, park or cemetery commissioners, by adopting a proposition therefor at an annual election, may establish such a board, or may establish a municipal board, with the powers, duties and responsibilities of two or more of such separate boards. In a village of the first class a board of commissioners or a municipal board may be composed of three or five members as shall be determined by the proposition. If such proposition be adopted, the board of trustees at its next annual meeting shall appoint such commissioners, for the terms of one, two and three years, respectively, or in a village which determines to have five commissioners, for the terms of one, two, three, four and five years, respectively; and at each annual meeting thereafter the board of trustees shall appoint one commissioner for the full term of three or five years, as the case may be. [1]A village of the first class, by the adoption of a proposition therefor, at an annual election, may establish a separate board of police commissioners, composed of three members. If the proposition to estab-

[1] Remainder of section new.

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lish such board be adopted, the board of trustees, at its next annual meeting, shall appoint such commissioners for the terms of one, two and three years respectively; and at each annual meeting thereafter the board of trustees shall appoint one commissioner for the full term of three years. Said board of police commissioners shall have all the powers, be subject to all the liabilities and perform all the duties of the president and board of trustees so far as the same relate to the police or police department.

This section was derived from Village Law, L. 1897, ch. 414, § 66. It was amended by L. 1909, ch. 469, § 1, which inserted "park" after the word "sewer" in the first sentence. It was also amended by L. 1913, ch. 53, § 2. The amendment is shown in the footnote.

Section 63 of the Village Law of 1897 is now covered by section 60.

General powers of board of trustees: see infra, § 89.

Scope of power as to boards.— Under the present and four following sections a village may establish the specified boards where they do not exist, and where they do exist may consolidate them with other boards. Op. Atty.-Gen. (1898) 202.

§ 64. Municipal boards; consolidation. Upon the adoption of a proposition therefor a village may establish a municipal board, consisting of three or five members, possessing all the powers and subject to all the responsibilities of two or more of the boards named in this article. The members of such municipal board shall be appointed by the board of trustees for the terms of one, two and three years, respectively, if the board consists of three members; and for the terms of one, two, three, four and five years, respectively, if the board consists of five members. Upon the filing of the certificate of the adoption of such proposition, all the powers, duties and responsibilities of such separate boards are transferred to the municipal board, and all property, records, books and papers in the possession of such separate boards shall, within fifteen days after such consolidation, be delivered to the municipal board. If the village has only one of the boards provided in this article, the powers and responsibilities of one or more other boards, named therein, may be conferred upon such existing board by the adoption of a proposition therefor at an annual election, and thereupon such existing board shall possess all the powers and responsibilities of such other board or commission consolidated with it, and shall thereafter be known as the municipal board of the village. If, on March fifteenth, nineteen hundred and five, a village had a municipal board consisting of three members, a proposition for establishing therein a municipal board to consist of five members may be adopted, and thereupon the board of trustees shall appoint the two additional members of such board for such terms that the term of one member of such board will expire each year.

This section was derived from Village Law, L. 1897, ch. 414, § 67, as amended by L. 1905, ch. 66, § 1.

Section 64 of the Village Law of 1897 is now covered by section 61.

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Delivery of books and papers: see PUBLIC OFFICERS LAW, § 80.
Officer refusing to surrender to successor: see PENAL LAW, § 1836.
Power of municipal board or commission.—A municipal board or commission created under authority of the present section possesses only the powers of the village boards which it supersedes. 9 St. Dept. Rep. 504.

§ 65. Continuance of separate boards. If a village now has a separate board of fire, water, light, sewer or cemetery commissioners, such commissioners shall continue in office during their respective terms, and no commissioners shall be hereafter appointed until the whole number be reduced, by expiration of term or otherwise, to less than three, except that in a village of the third class the commissioner last appointed shall cease to be a commissioner from and after the passage of this chapter, until the number be reduced to three, and except that if a village of the first or second class now has a board of commissioners composed of five members, such number shall be continued. All such commissioners shall hereafter be appointed by the board of trustees; and the terms shall be so adjusted that one shall expire each official year.

This section was derived from Village Law, L. 1897, ch. 414, § 68, as amended by L. 1898, ch. 668, § 1.
Section 65 of the Village Law of 1897 is now covered by section 62.
Official year: see supra, §§ 43, 52.
Composition of boards in villages of the second class.— It was held in People v. Neubrand, (1898) 60 N. Y. S. 588, that where a village of the second class had at the time the present statute went into effect a board of water commissioners composed of six members, and thereafter the terms of two of the members expired, leaving in office four members, the board of trustees was authorized to appoint another member so as to make and continue a board of five members. In this connection see Op. Atty.-Gen. (1902) 165.
Validity of acts of elected commissioner.— It was held in Canaseraga v. Green, (1903) 88 N. Y. S. 539, that the only proper method of creating a village water commissioner was by appointment by the board of trustees of the village, and that a person holding that office by authority of a village election did not hold the office even under color of title so as to make his official acts valid as those of a de facto officer.
Mandamus as appropriate remedy to determine right of commissioner to office.— Mandamus is not an appropriate remedy for the determination of the question whether an appointee is or is not a de jure village commissioner. People v. Neubrand, (1898) 32 App. Div. 49, 52 N. Y. S. 280.
Cited.—This section was cited in Op. Atty.-Gen. (1898) 211, in connection with the question of the control of the village fire department. See infra, § 206 note.

§ 66. Continuance of municipal board. A municipal board or commission heretofore created and existing in a village under a general law when this chapter takes effect is continued, and one member of such board or commission shall be appointed by the board of trustees each year for a full term, as provided by the law relating to such board or commission in force on the day next preceding the day when this chapter takes effect, and such terms are hereby established as the terms for the members of such board or commission under this chapter. Such municipal board or commission so continued shall possess all the powers and responsibil-

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ities and be subject to all the duties and liabilities herein conferred or imposed upon the several separate boards named in this article, except boards of ceemtery commissioners.

This section was derived from Village Law, L. 1897, ch. 414, § 69.
Section 66 of the Village Law of 1897 is now covered by section 63.
When chapter takes effect: see infra, § 391.
Board of health as a municipal board.— It was ruled in Op. Atty.-Gen. (1898) 202, that a board of health in a village was a municipal board within the purview of the present section.
Cited.—This section was cited in Op. Atty.-Gen. (1899) 315, in connection with the construction of section 82, relating to the duties of the village clerk. See infra, § 82 note.

§ 67. Abolition of separate or municipal boards. A separate board of fire, water, light, sewer or cemetery commissioners, or a municipal board, may be abolished by adopting a proposition therefor at an election. The abolition of such a board shall take effect immediately upon filing a certificate showing the adoption of the proposition. Within ten days after such certificate is filed, the board shall deliver to the clerk of the village its records, books and papers; and shall also within the same time deliver to the treasurer all funds, and to the president all other property in its possession or under its control, belonging to the department.

This section was derived from Village Law, L. 1897, ch. 414, § 70.
Section 67 of the Village Law of 1897 is now covered by section 64.
Delivery of books and papers: see PUBLIC OFFICERS LAW, § 80.
Officer refusing to surrender to successor: see PENAL LAW, § 1836.
Cited—This section was cited in Op. Atty.-Gen. (1899) 315, in connection with the construction of section 82, relating to the duties of the village clerk. See infra, § 82 note.

§ 68. Books and papers to be open to inspection. All books, papers and records relating to village affairs kept by any board or officer shall be open to inspection at all reasonable hours by every inhabitant of the village.

This section was derived from Village Law, L. 1897, ch. 414, § 71.
Sections 68 and 69 of the Village Law of 1897 are now covered by sections 65 and 66.

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*ARTICLE 3-A

Receiver of Taxes in Certain Villages

Section 70. Office created; term of office; compensation.
71. Powers and duties of receiver.
72. Office hours.
73. Election; term of office; salary; bond; oath of office.
74. Warrant for collection of taxes.
75. Certain offices abolished.

§ 70. Office created; term of office; compensation. In each village adjoining a city of the first class, situated within a county having a population of four hundred thousand or upwards, according to the last state enumeration, except in counties adjoining a city of over one million inhabitants, there shall be a receiver of taxes and assessments. The term of office of such receiver of taxes and assessments shall be four years. Such office shall be filled by the electors of the village, in the same manner as other elective offices of the village, at the times hereinafter provided. The salary shall be fixed by the board of trustees of such village.

New. Added by L. 1916, ch. 555, § 1.
Section 70 of the Village Law of 1897 is now covered by section 67.

§ 71. Powers and duties of receiver. The receiver of taxes and assessments shall be a resident of such village, [1]and shall hold no other public office except the receiver of taxes and assessments of the town in which such village is located in counties having a city of more than four hundred thousand and less than one million, and shall have and possess and shall exercise in the manner and within the time prescribed by law all the rights, powers, authority and jurisdiction possessed and exercised by either the collector of taxes or the treasurer of such village, and shall be subject to all of the duties of each of said officers. It shall be the duty of such receiver to receive and collect all village taxes and assessments that may be levied in such village, including water rates, license moneys, and all other moneys provided by law to be paid to the treasurer or collector of such village, or to the village trustees. All fees collected by him upon village taxes or assessments heretofore paid to the collector or to the treasurer shall belong to the village and shall be paid into the general village fund. Such receiver shall enter daily in a suitable book or books the sum of money received daily, the names of the persons from whom received, and the particular tax or assessment, subject or department for which such sums were paid, and the interest, penalty or

* This article was added by L. 1916, ch. 555.
[1] " and shall hold . . . and less than one million " new.

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fee, if any, paid thereon, and such book or books shall be public records and shall be open during office hours to public inspection to any taxpayer in such village. Within twenty-four hours after receiving the same he shall deposit all sums of money received by him belonging to the village in such bank or banks as may be designated from time to time by the trustees of such village. All moneys deposited by him so belonging to such village shall be paid out and disbursed by him on his check as such receiver upon proper order of the trustees.

New. Added by L. 1916, ch. 555, § 1. It was amended by L. 1917, ch. 20, § 1. The amendment is shown in the footnote.
Section 71 of the Village Law of 1897 is now covered by section 68.

§ 72. Office hours. Such receiver shall keep his office in said village, and such office shall be open each and every day, Sundays and all public holidays excepted, from nine o'clock in the morning until four o'clock in the afternoon.

New. Added by L. 1916, ch. 555, § 1.
Section 72 of the Village Law of 1897 relating to "Transfer of funds and records" was omitted in the consolidation of 1909, the provision being of a temporary nature.

§ 73. Election; term of office; salary; bond; oath of office. The receiver of taxes and assessments shall be elected for a full term at the next regular election of village officers occurring after this article takes effect and at such election in every fourth year thereafter; and also at the regular election of village officers in any year for an unexpired term to fill a vacancy occurring more than thirty days before such election. The full term of office of such receiver shall begin, or a receiver elected to fill a vacancy shall take office, on the first Monday succeeding his election, and such term shall end at the close of the day preceding the Monday following the election at which his successor is required to be chosen. The salary of such receiver shall be raised and collected by tax as other village charges are raised and collected. In the event of a vacancy in such office by death, resignation or other cause, the board of trustees shall fill the same, at a regular or special meeting called for that purpose, by an appointment expiring at the close of the day preceding the first Monday following the next regular election of village officers at which the office may be filled by election as hereinbefore provided; but nothing contained in this article or any other statute shall authorize an appointment by the board of trustees to fill a vacancy in such office before the first Monday following the regular election of village officers first occurring after this article takes effect. Such board of trustees may at any regular or special meeting fix the amount of the bond to be given by such receiver, and such bond shall be

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subject to approval as to form and sufficiency of surety by such board. Such bond shall be conditioned on the faithful discharge of the duties of such receiver of taxes and assessments and shall be filed in the office of the village clerk. Such receiver after having been elected or appointed and before entering upon the discharge of the duties of his office shall take and subscribe and file in the office of the village clerk the constitutional oath of office.

New. Added by L. 1916, ch. 555, § 1.

§ 74. Warrant for collection of taxes. The board of trustees of such village shall issue warrants or authorizations to such receiver for the collection of all taxes and assessments imposed, levied or assessed by them in such village and for the collection of all moneys due or to become due to them as trustees of such village, and all other warrants or authorizations for the collection of taxes, assessments, or other moneys which, were it not for the provisions of this article, would be issued to some other officer, shall be issued to the receiver of taxes and assessments.

New. Added by L. 1916, ch. 555, § 1.

§ 75. Certain offices abolished. The offices of collector and treasurer of such village are abolished from and after the beginning of the term of office of the first receiver of taxes under this article, and no collector nor treasurer shall be chosen at any time to succeed the collector or treasurer in office when the term of such receiver begins. Upon the taking of office by the first receiver of taxes and assessments, as provided by this article, the collector of the village and the treasurer of the village shall surrender up and deliver to said receiver all assessment-rolls, books, papers, writings and all other documents in his possession as such officer. All provisions of law applicable to village collectors or treasurers and not inconsistent with this act, are hereby made applicable to the office of receiver of taxes and assessments and such receiver shall continue to collect all fees and penalties which such collector or treasurer would collect were it not for this article.

New. Added by L. 1916, ch. 555, § 1.

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ARTICLE 4

Powers, Duties and Compensation of Officers

Section 80. President.
81. Treasurer.
82. Clerk.
83. Franchises; filing; duty of clerk.
84. Street commissioner.
85. Board of health.
86. Compensation and duties of village officers not otherwise prescribed.
87. Meetings of the board of trustees.
88. Presiding officer and rules of proceedings.
89. General powers of the board of trustees.
90. Village ordinances.
90-a. Building and sanitary codes.
91. Licensing occupations.
92. Definition of village ordinances.
93. Violation of ordinances.
94. Approval by board of trustees of ordinances of separate board.
95. When ordinances to take effect.

§ 80. President. The president of a village is its executive officer and the head of its police force. It is his duty to see that the provisions of this chapter, and the resolutions and ordinances of the board of trustees, are enforced, to cause all offenses created thereby to be prosecuted, to institute civil actions in the corporate name of the village for penalties recoverable by the village, to exercise supervision over the conduct of the police and other subordinate officers of the village, and to recommend to the board of trustees such measures as he may think necessary. If the president be absent or unable to perform the duties of his office, the trustees shall appoint one of their number to act as president, who, during the absence or inability of the president, is vested with all the powers and may perform all the duties of the president. [1]If he be the president of a village incorporated prior to July eighteenth, nineteen hundred and seven, he shall cause to be prepared an outline map and description of the corporate limits of such village, which map shall be drawn or traced in black india ink on tracing cloth, which map and description shall be certified by him as true and correct, and transmitted to, and filed by the secretary of state as a record of his office. Within sixty days after this act becomes a law it shall be the duty of the secretary of state to notify the president of each of the villages herein designated to file with him

[1] Remainder of section new.

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within sixty days after such notification such map and description as herein required. The cost of preparing such outline map and description shall be a proper charge in the maintenance of the government of the village.

This section was derived from Village Law, L. 1897, ch. 414, § 80. It was amended by L. 1911, ch. 205, § 1. The amendment is shown in the footnote.

Duty to preside at meetings of board of trustees and right to vote: see infra, § 88.

Power to suspend license: see infra, § 91.

Provisions applicable to a village embracing the entire territory of a town: see infra, § 322 et seq.

Provisions applicable to certain villages: see infra, § 310 et seq.

To take charge of property purchased at tax sale: see infra, § 124. *To sign bonds:* see infra, § 129. *To act as member of police department:* see infra, § 188.

Duty as to removal of highway encroachments.—The duty of taking steps to enforce the removal of encroachments from the public highways of a village is a ministerial duty of the president of the village. No duty in that regard is cast upon the street commissioner. People v. Gross, (1910) 137 App. Div. 77, 122 N. Y. S. 135.

Duty of president as to signature of voucher under unlawful contract.—It being unlawful for a village trustee to make a contract in his official capacity in which he is individually interested, it is the duty of the village president to refuse to sign any voucher in payment under such an unlawful contract. Op. Atty.-Gen. (1908) 501.

Eligibility to presidency of person interested in manufacture or sale of intoxicating liquors.—The village president is a police officer of the village, and therefore if interested in the manufacture or sale of intoxicating liquors is ineligible to hold such office, under chapter 163 of the Laws of 1890 (Liquor Tax Law, § 22), prohibiting excise commissioners, excise inspectors, and police officials, or their subordinates, from being interested in the manufacture or sale of intoxicating liquors. Op. Atty.-Gen. (1906) 612.

Cited.—This section was cited in Op. Atty.-Gen. (1905) 484, in connection with the construction of section 32 (formerly § 31b) of the Liquor Tax Law, relating to issuance of liquor tax certificates to hotel keepers.

§ 81. Treasurer. The treasurer of a village is its chief fiscal officer. He shall receive all moneys belonging to the village, and keep an accurate account of all receipts and expenditures thereof, showing the funds for which, and the persons from whom, such moneys are received, and the funds from which, and the persons to whom, such moneys are paid. He shall deposit all moneys received by him in the banks designated by the board of trustees, subject to his check, as treasurer. Interest on village money belongs to the village, and must be credited by the treasurer to the proper fund. No money shall be paid from the treasury of the village, except in pursuance of a judgment or order of a court, or an audit and allowance by the board of trustees and an order designating the fund, signed by the president and countersigned by the clerk, or by an order of a board of commissioners of the village upon a fund within its jurisdiction. The treasurer shall not draw any money so deposited by him, except in pursuance of such judgment or order. He shall report, in writing, to the board of trustees when requested, the amount of money received by him since his last report, the sources thereof, and the true state of the

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treasury, which reports shall be filed with the village clerk. He shall, on or before the fifth day of March in each year, file with the village clerk an accurate, detailed and verified statement, showing all moneys paid into the village treasury during the previous fiscal year, the persons by whom, and the funds for which, the same were paid, all expenditures from the treasury during such year, the persons to whom, and the funds from which, such moneys were paid, the balance in the treasury to the credit of each fund at the commencement and at the end of the fiscal year, and all indebtedness of the village outstanding, to whom, so far as practicable, the same is owing, upon what account, and when payable. The treasurer shall make such further reports as may be required by the board of trustees.

This section was derived from Village Law, L. 1897, ch. 414, § 81.

Auditing and paying fraudulent claims: see PENAL LAW, § 1863.

Collection of taxes by treasurer: see infra, § 117.

Falsification of accounts by public officers: see PENAL LAW, § 1865.

Fiscal year: see infra, § 100.

Fraudulently presenting bills or claims to public officers for payment: see PENAL LAW, § 1872.

Obtaining proceeds of fraudulent audit or payment: see PENAL LAW, § 1864.

Treasurer to receipt for license fees: see infra, § 91. *To bid in property at tax sales:* see infra, § 124. *To sign bonds:* see infra, § 129.

Authority to make contracts.—The village treasurer is not a member of the board of trustees, and is not authorized to make contracts on behalf of the village. Matter of Kenmore, (1908) 59 Misc. 388, 110 N. Y. S. 1008.

Right to deduct personal debt in paying claim.—A village treasurer when paying an audited claim against the village has no right to deduct from the moneys the amount of an indebtedness of the claimant to him personally. Tobin v. Kage, (1892) 64 Hun 531, 19 N. Y. S. 440.

Liability of treasurer where depository not designated.—Where the treasurer of a village, who is an employee of the bank where the village funds are on deposit, upon the election of his successor in office who is also an employee of the bank, directs the transfer of the village funds to him, and they are thereafter carried on the bank's books in the name of the new treasurer with the knowledge and acquiescence of the latter who thereafter pays village orders on the funds, the new treasurer is liable to the village for the loss of the balance standing to his credit when the bank becomes insolvent; and he is not relieved from such liability by the fact that the village trustees accept an offer by the bank to pay interest on the funds left with it, such offer and acceptance not amounting to a designation of the bank as a depository for the funds. Bath v. McBride, (1916) 219 N. Y. 92, 113 N. E. 789, reversing 163 App. Div. 714, 148 N. Y. S. 836, 840, which reversed 81 Misc. 618, 142 N. Y. S. 1014.

Form and publication of report.—The present section requires the annual report of the village treasurer be made in detail, and under section 102 (infra) it must be published and posted in the same manner as the notice of the annual village election. 8 St. Dept. Rep. 572.

§ 82. **Clerk.** The clerk of each village shall, subject to the direction and control of the board of trustees, have the custody of the corporate seal, and of the books, records and papers of the village, and of all the official reports and communications to the board. He shall act as clerk of the board of trustees, and of each board of village officers, and keep a record of their proceedings; he shall keep an indexed record, in a separate book, of all village

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ordinances; he shall keep an accurate account of all orders drawn on the treasurer of the village, showing the persons to whom, and the fund from which, the amount of each order is to be paid. He shall, at all reasonable hours, on demand of any person, produce for inspection the books, records and papers of his office, and shall furnish a copy of any portion thereof, certified in the proper form to be read in evidence, upon the payment of his fees therefor, at the rate of six cents per folio.

This section was derived from Village Law, L. 1897, ch. 414, § 82.

Deputies generally: see PUBLIC OFFICERS LAW, § 9.

Eligibility of female to hold office of clerk or deputy clerk: see supra, § 42.

Seal of public officer or corporation: see GENERAL CONSTRUCTION LAW, § 43.

Taking unlawful fees or fees for services not rendered: see PENAL LAW, §§ 1826, 1830.

Clerk as registrar of vital statistics.— It has been ruled that a village clerk, as such officer, is not required to serve as registrar of vital statistics of the village board of health. Op. Atty.-Gen. (1911) 622; Op. Atty.-Gen. (1901) 173; Op. Atty.-Gen. (1899) 315. It has been ruled, however, that the clerk is ex officio clerk of the board of health under the statutory provision that he is to act as clerk of each board of village officers, and keep a record of their proceedings. Op. Atty.-Gen. (1898) 214.

§ 83. Franchises; filing; duty of clerk. Duplicate originals of every resolution, certificate or other instrument whereby a village, or any board or officer thereof, grants a franchise, including a privilege or consent of any kind, to a public service corporation shall be executed and deposited with the village clerk; and such franchise shall not be operative for any purpose until so executed and deposited. The village clerk, upon receiving the same, shall file one such duplicate in his office with the records and papers of the village and shall immediately cause the other to be filed in the office of the clerk of the county in which the village is situated.

This section was derived from Village Law, L. 1897, ch. 414, § 82a, as added by L. 1906, ch. 1.

Section 83 of the Village Law of 1897 is now covered by section 84.

§ 84. Street commissioner. Under the direction and supervision of the board of trustees, the street commissioner of a village has supervision and charge of the construction, improvement and repair of the public grounds, squares, parks, streets, walks, culverts, wells, and of such other property of the village as the board may determine; and may employ the requisite laborers, and direct them as to the time and manner of the execution of their work. He shall certify to the board of trustees, when required, the names of all persons who have been so employed, the rate of compensation and their term of service.

This section was derived from Village Law, L. 1897, ch. 414, § 83.

Section 84 of the Village Law of 1897 is now covered by section 85.

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Power to act as member of police department: see infra, § 188.
Streets, sidewalks and public grounds generally: see infra, § 140 et seq.
Street commissioner as subject to direction of board of trustees.—Under the present section the authority of a village street commissioner must be exercised under the direction and supervision of the board of trustees. Hungerford v. Waverly, (1908) 125 App. Div. 311, 109 N. Y. S. 438; Op. Atty.-Gen. (1911) 401.
Duty as to removal of encroachments from village highways.—No duty rests upon the street commissioner to take steps to enforce the removal of encroachments from the public highways of a village; that duty is cast upon the president of the village. People v. Gross, (1910) 137 App. Div. 77, 122 N. Y. S. 135.

§ 85. Board of health. The board of health of each village shall have all the powers, and be subject to all the duties, provided by the public health law.

This section was derived from Village Law, L. 1897, ch. 414, § 84.
Section 85 of the Village Law of 1897 is now covered by section 86.
Contracts for purification of water and sewerage: see GENERAL MUNICIPAL LAW, § 120.
Establishment of public general hospitals: see GENERAL MUNICIPAL LAW, § 126 et seq.
Local boards of health generally: see PUBLIC HEALTH LAW, § 20 et seq.
Penal provisions relating to public health: see PENAL LAW, § 174 et seq.

§ 86. Compensation and duties of village officers not otherwise prescribed. Except as provided in this section the president and trustees, and the fire, water, light, sewer and cemetery commissioners, shall serve without compensation, but the members of the board of trustees shall be entitled to the compensation fixed by law for inspectors of election when acting as such, and to the same compensation as town assessors for each day actually and necessarily spent by them in making the village assessment. The board of trustees of a village incorporated under and subject to this chapter or to a special law may, upon its own motion, and shall, upon the petition of twenty-five electors of such village qualified as provided by this chapter to vote upon a proposition, cause to be submitted at a village election a proposition to fix the compensation of the president or of the trustees or of the fire, water, light, sewer or cemetery commissioners of such village at an amount specified in such proposition. Only persons who possess the qualifications prescribed in this chapter for voters upon a proposition shall be entitled to vote upon such proposition. If such proposition be adopted the salary of the officer or officers shall be deemed fixed in accordance with the amount specified therein, but a proposition may be submitted in like manner at a subsequent election either changing the amount fixed by such resolution or providing that such officer or officers shall thereafter receive no compensation for services. A village may, on the adoption of a proposition therefor, determine that the compensation of the collector of such village shall be fixed by the board of

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trustees; after which determination the collector in said village shall not collect or receive fees.

The board of trustees may fix the compensation and further declare the powers and duties of all other village officers or boards and may require any officer or board of the village to furnish reports, estimates or other information relating to any matter within his or its jurisdiction.

This section was derived from Village Law, L. 1897, ch. 414, § 85. It was amended by L. 1911, ch. 66, § 1, which added "Except as provided in this section" at the beginning of the section, and also added the second, third and fourth sentences. It was further amended by L. 1913, ch. 61, § 1, by which the fifth sentence was added.

Section 86 of the Village Law of 1897 is now covered by section 87.

Qualifications of voters: see supra, § 41.

Compensation of treasurer of board of water commissioners.— Under the present section the treasurer of the board of water commissioners, of which board he is a member, must serve without compensation. Op. Atty.-Gen. (1911) 241.

Compensation of trustees when acting as inspectors and assessors.— It was held in Matter of Kenmore, (1908) 59 Misc. 388, 110 N. Y. S. 1008, that village trustees acting as inspectors of election, where the board of supervisors had established no higher rate of compensation for inspectors of elections in towns, were entitled to compensation at the rate of two dollars per day; and that when acting as assessors, where the town board of the town in which the village was situated had fixed the compensation of the assessors of the town at three dollars per day, the village trustees were entitled to compensation at that rate.

§ 87. Meetings of the board of trustees. The president and the trustees of a village shall constitute the board of trustees thereof. The board shall meet at seven o'clock in the afternoon on the Monday following the annual election, and such meeting is known as the annual meeting of the board. The board shall hold other regular meetings at such times and places in the village as it shall, by resolution, provide. Special meetings may be called by the president or by any two trustees, by causing a written notice, specifying the time and place thereof, to be served upon each member of the board, personally, at least one hour, or by leaving a notice at his residence or place of business with some person of suitable age and discretion, at least twenty-four hours before the time of meeting.

This section was derived from Village Law, L. 1897, ch. 414, § 86.

Section 87 of the Village Law of 1897 is now covered by section 88.

Manner of serving notice: see infra, § 330.

Cited.— This section was cited in Matter of Frame, (1910) 69 Misc. 568, 127 N. Y. S. 752, in connection with the construction of section 53. See supra, § 53 note.

§ 88. Presiding officer and rules of proceedings. The president of the village shall preside at the meetings of the board of trustees, and shall have a vote upon all matters and questions coming before the board. A majority of the board shall constitute a

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quorum for the transaction of business, but a less number may adjourn and compel the attendance of absent members. Whenever required by a member of the board, the vote upon any question shall be taken by ayes and noes, and the names of the members present and their votes shall be entered in the minutes. The board may determine the rules of its procedure, and may compel the attendance of absent members by the entry of a resolution in the minutes, directing any peace officer residing within the village to arrest such absent member and take him before the board of trustees to answer for his neglect. A copy of the resolution, certified by the clerk of the village, shall be sufficient authority to any peace officer residing in the village to arrest such absent member and bring him before the board.

This section was derived from Village Law, L. 1897, ch. 414, § 87.
Laws 1911, ch. 519, added a subdivision 22-a to section 88; but L. 1913, ch. 19, corrected the evident error and transferred subdivision 22-a to section 89.
Section 88 of the Village Law of 1897 is now covered by section 89.
Adjournment of meeting: see GENERAL CONSTRUCTION LAW, § 13.
Quorum and majority defined: see GENERAL CONSTRUCTION LAW, § 41.

§ 89. General powers of the board of trustees. The board of trustees of a village:

1. *Village property and finances.* Has the management and control of the finances and property of the village, except such as may be under the jurisdiction of the board of health, fire, water, light, sewer or cemetery commissioners, or other boards or officers of the village.

2. *Buildings to be kept in repair and insured.* Shall keep all buildings and other property of the village in repair, and may cause the same to be insured against loss or damage by fire.

3. *Village lands.* May purchase, hold and convey real property in the name of the village, but only after the adoption of a proposition therefor at a village election. Every conveyance by the village shall be executed in its corporate name, by the president, in pursuance of a resolution of the board of trustees.

4. *Village buildings.* May erect and maintain upon village lands, or may rent and furnish, necessary buildings for holding elections, for the use of the village officers, or for other necessary village purposes, and may furnish necessary books, stationery and other supplies for village officers.

5. *Lock-up.* May erect and maintain a lock-up, or designate a place for the detention of persons arrested under this chapter or under any ordinance of the village; and may contract with a town in which any part of a village is situated for the temporary detention in such lock-up of persons arrested in such town.

6. *Market.* May purchase or lease lands or buildings for the establishment and maintenance of a market; may lease such

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market or any part thereof, for such term and at such rent as it may determine; and may prohibit the establishment of a market in the village, except at such place as it may designate.

7. *Fire limits.* May establish fire limits, by resolution, filed in the office of the village clerk, and posted in three public places in the village; and may provide in said resolution that certain streets or blocks as designated therein shall constitute the limits within said village within which wooden buildings or structures may not be erected or substantially altered.

Amended by L. 1910, ch. 651, § 1. This amendment added the part of the subdivision following the semi-colon.

8. *Official paper.* May designate a newspaper as the official paper of the village. If but one newspaper is published in the village, it shall be designated as the official paper, if any paper is so designated. If no newspaper is published in the village, any other newspaper published in the same county, having in the opinion of the board the largest circulation in the village, may be so designated. If no official paper has been designated, the designation of a newspaper for the publication of a notice, resolution, ordinance or other proceeding of the board shall be deemed a designation thereof as the official paper of the village for the purpose of such publication. The fees of the official paper shall be fixed by the board at a rate not exceeding seventy-five cents per folio.

9. *Village map.* Shall cause a map of the village to be made and kept on file with the clerk, showing the boundaries of the village and the names and boundaries of all streets and public grounds therein; also the location of all sewers, hydrants, water pipes, and all underground pipes and works belonging to the village, and shall, when necessary, cause such map to be revised, corrected and renewed.

10. *Names of streets.* May give names to the streets and public places, and numbers to the lots or buildings, in the village.

11. *Village attorney.* May employ an attorney and pay him a reasonable compensation.

12. *Public pound.* May establish and maintain a public pound and employ a keeper thereof, and fix his compensation, and the fees to be charged by him.

13. *Village clock and scales.* May establish and maintain a village clock and scales for the public convenience; and fix the fees for the use of such scales.

14. *To act as fence viewers.* Possesses concurrent jurisdiction with town fence viewers, and has all their powers with respect to division fences within the village.

15. *Drains.* May construct drains and culverts and regulate water courses, ponds and watering places within the village, and

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power and authority is hereby conferred upon the board of trustees of a village, in the name of the village, to acquire title to real property for public use, or an easement for a right of way therein necessary therefor, whether such real property, or an easement for a right of way therein is located within or without such village, by purchase, or if unable to agree with the owners for the purchase of such real property or an easement for a right of way therein, the board of trustees may acquire such real property or easement for a right of way therein, by condemnation as provided by and under chapter twenty-three, title one of the code of civil procedure, for any of the purposes mentioned in this subdivision and to protect the property within the village from floods, freshets and high water. The board of trustees may cause such construction or regulation, as the case may be, with respect to drains, culverts, water courses, ponds and watering places to be done wholly at the expense of the village, or of the owners of the property benefited, or partly at the expense of each; but such construction or regulation shall not be wholly at the expense of the owners of the property benefited, or partly at the expense of such owners and partly at the expense of the village, except as provided by the provisions, so far as applicable, of sections two hundred and sixty-two to two hundred and seventy-six, both inclusive, of this chapter, which said provisions, so far as applicable, are extended to and shall apply to the powers conferred by this subdivision.

Amended by L. 1910, ch. 454, § 1, which added the last sentence, and by L. 1916, ch. 36, § 1, which added to the first sentence the words "or an easement for a right of way . . . for a right of way therein."

16. *Water supply.* May establish, regulate and repair public reservoirs, aqueducts, pumps, wells, fountains, and watering and drinking places.

17. *Lighting streets.* May provide for the lighting of the streets and the safety of the lamps.

18. *Stands for vehicles.* May designate stands for hacks, carriages and other vehicles.

19. *When to have powers of other boards.* Has all the powers and is subject to all the liabilities, and must perform all the duties, of a separate board of fire, water, light, sewer or cemetery commissioners, if the village has no such separate board; and in that case a provision applying to either of such boards applies to the board of trustees.

20. *Banks of deposit.* Shall designate banks for the deposit of all moneys received by the treasurer, and may require of any such bank security for the repayment thereof; and may require a report by the cashier thereof to each regular meeting of the board of the amount on deposit to the credit of the treasurer.

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21. *Auditing bills.* Shall audit all bills and accounts and all claims for damages against the village, [1] except that in villages having a separate board of fire, water, light, sewer, park or cemetery commissioners, or board possessing the powers of two or more such boards or a village board possessing like powers, it may, by ordinance, authorize, empower and direct such board or boards to audit and order paid all bills and accounts incurred by such board or boards and which are payable out of the funds within the jurisdiction of such board or boards, but no bill or account against the village [2] or any such board or boards for property purchased, materials furnished, services rendered, or disbursements, shall be audited or paid, nor shall an action be brought thereon unless such bill or account shall be made out in items, and properly dated with an affidavit attached thereto by the person, or one of the persons, or an officer of a corporation, presenting or claiming the same, that the items of such bill or account are correct, that the services and disbursements charged therein have been in fact rendered or paid, and that no part thereof has been paid or satisfied.[3] The board [4] or boards shall cause to be entered upon its [5] or their minutes the amount claimed, the amount allowed, and the fund from which each amount allowed shall be paid. No action shall be brought upon any such bill or account within thirty days from the time the same was presented to the board [6] authorized to audit the same.

Amended by L. 1917, ch. 150, § 1. The amendments are shown in the footnotes.

22. *Parades of fire department.* May provide for the public inspection and parade of the fire department, at an annual expense, including the hiring of a band, not exceeding two hundred dollars.

22-a. *Band concerts.* May provide for public band concerts within the village, annually between June first and September fifteenth, but only after a proposition therefor, the submission whereof is hereby authorized, shall have been duly adopted at a village election, which proposition shall state the maximum amount to be expended for such purpose in any one year.

Added by L. 1911, ch. 519, § 1, as a subdivision of section 88. The error was corrected by L. 1913, ch. 19, § 1, which transferred the subdivision to section 89. It also amended the subdivision by omitting the words "if a village of the third class" which formerly followed the word "May" at the beginning of the subdivision.

[1] "except that in villages having a separate board . . . within the jurisdiction of such board or boards" new.
[2] "or any such board or boards" new.
[3] "by the village" omitted.
[4] "or boards" new.
[5] "or their" new.
[6] "authorized to audit the same" in place of "of trustees."

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23. *Dumping grounds.* May, whenever in its judgment the interests of the village require it, purchase or acquire by condemnation proceedings lands for the establishment of a public dump or dumping ground in any such village, and may prohibit the use of any other lands within the village for such purpose.

24. *Fire protection.* May make contracts for fire protection, and extinguishment of fires, with [1] the fire department [2] in the village or an adjoining [3] incorporated or unincorporated village for a term of years not to exceed ten.

Amended by L. 1911, ch. 495, § 1. The amendments are shown in the footnotes.

25. *Disposition of garbage and ashes.* a. May provide for the removal from the buildings in said village and for the disposition of swill, garbage, ashes and rubbish of said buildings, or for the removal and disposition of the swill and garbage alone, or the ashes alone, either directly through the employees of said village or by contracting with other persons, provided, however, that authority shall be first obtained therefor by a proposition adopted at a village election, which proposition shall state the maximum amount to be expended for such purpose or purposes in any one year.

b. Upon the adoption of a proposition therefor at a village election, may establish or construct a plant for the disposal of swill, garbage, rubbish and ashes, or any of them, and may purchase or lease real property therefor and vehicles or other appurtenances to be used in connection therewith. Such proposition shall state the estimated maximum and minimum cost thereof. Upon the acquisition of such plant, may, without the adoption of any proposition as to the amount to be expended therefor in any one year, operate the same and collect and dispose of swill, garbage and rubbish, either directly through the employees of said village or by contracting with other persons for a period not exceeding five years.

Amended by L. 1916, ch. 114, § 1, by which "rubbish" was added in the first part of the section. It was further amended by L. 1917, ch. 27, § 1, which added subdivision b.

26. *Marking of poles.* May require all telephone, telegraph, electric light and electric power poles where the same are located upon a public highway within the limits of said village, to be marked with the name or initials of the owner or owners of the poles, in such distinct and legible letters and characters, and in such manner as they may prescribe.

[1] "the" in place of "a".
[2] "the village or" new.
[3] "incorporated or" new.

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27. May contract at the expense of the village for indemnity insurance insuring the village against damages for injuries to persons.

New. Added by L. 1914, ch. 403, § 1. It was enacted without a sidehead.

28. *Publicity fund.* When authorized by a resolution duly adopted by a majority of the qualified voters of such village, voting thereon at a general village election or at a special election called and held for such purpose, may establish a publicity fund of such amount as the resolution may direct, to be expended for the purpose of advertising the advantages of such village as a summer and winter resort or otherwise, including the necessary and legitimate expense of securing the designation of such village as the place for holding the convention or meeting of any organization or society, and for such other and additional purposes as may tend to promote the general commercial and industrial welfare of the village, and for that purpose may raise by taxation a sum not exceeding one thousand dollars per annum to be assessed, levied and collected in the same manner that other village taxes are assessed, levied and collected.

New. Added by L. 1916, ch. 108, § 1.

29. *Lighting districts.* Shall have the power, upon application by a petition in writing of a majority of the resident owners of taxable real property within the boundaries of a proposed lamp or lighting district as the same appear upon the last preceding completed assessment roll, to establish such special lighting district or districts for the proposed system of street lighting and from time to time alter or extend the same with full power to order such construction and installation and to enter into a contract for lighting in such district or districts so established or extended as said board may deem proper or expedient. Such petition shall contain a map of such district and a description of the same, and said district or districts or any extension thereof shall become established by the filing by the board of trustees of a certificate in the office of the village clerk describing the bounds of such district or districts or any extension of the same. The amount of any contract that may be entered into for such special lighting district, pursuant to the provisions of this subdivision, when established upon the petition of the property owners, shall be apportioned by the board of trustees by ordinance between the owners within such district and the village at large; but in no event shall said owners be charged more than the per centum specified in the application, and said amounts so apportioned to the property owners shall be assessed, levied and collected in the same

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manner and by the same officers as the village taxes, charges or expenses for such village are now assessed, levied and collected. The board of trustees may, on its own motion, and shall upon the petition of twenty-five electors qualified to vote upon a proposition, cause to be submitted at the next regular or special village election a proposition for a special lighting district or districts or any extensions thereof. When the lighting district or districts or any extensions thereof are established pursuant to a proposition submitted at any village election, the amount of any contract entered into for such special lighting shall be assessed, levied and collected upon and between all of the taxable property in said village in the same manner and by the same officers as the village taxes, charges or expenses are now assessed, levied and collected.

New. Added by L. 1917, ch. 414, § 1.

This section was derived from Village Law, L. 1897, ch. 414, § 89. Subdivision 15, as amended by L. 1904, ch. 193, § 1; subdivision 23, as added by L. 1901, ch. 50, § 1; subdivision 24, as added by L. 1901, ch. 593, § 1; subdivision 25, as added by L. 1905, ch. 500, § 1. Additions and amendments made subsequent to the enactment of the consolidated Village Law are given following the subdivision affected.

Section 89 of the Village Law of 1897 is now covered by section 90.

Actions against village: see infra, § 341.

Auditing and paying fraudulent claims: see PENAL LAW, § 1863.

Fences generally: see TOWN LAW, § 360 et seq.

Fraudulently presenting bills or claims to public officers for payment: see PENAL LAW, § 1872.

General municipal finances: see GENERAL MUNICIPAL LAW, § 3 et seq.

Insurance of municipal property: see GENERAL MUNICIPAL LAW, § 78.

Light generally: see infra, § 240 et seq.

Misappropriation and falsification of accounts by public officers: see PENAL LAW, § 1865.

Obtaining proceeds of fraudulent audit or payment: see PENAL LAW, § 1864.

Powers of fence viewers: see TOWN LAW, § 364.

Presentation of claims and costs against municipal corporation: see Code Civ. Pro., § 3245.

Village clerk to keep account of all orders drawn on treasurer: see supra, § 82.

Village finances generally: see infra, § 100 et seq.

Water generally: see infra, § 220 et seq.

Power to transfer funds.— It has been ruled that under the authority conferred by subdivision 1 of the present section the board of trustees may transfer a surplus in the sewer fund to the light fund, provided such surplus consists of revenues derived from taxation under subdivision 4 of section 110 (infra), or of revenues other than from direct taxation not specifically required to be credited to the sewer fund. 9 St. Dept. Rep. 490.

Power to purchase fire apparatus.— The board of trustees of a village having no separate board of fire commissioners has authority, under subdivision 19 of the present section, to purchase fire apparatus. Op. Atty.-Gen. (1907) 555.

Power to appoint chief engineer of fire department.— Under subdivision 19 of the present section the power to appoint a chief engineer of the fire department of a village which has no board of fire commissioners rests with the board of trustees and not with the council of the fire department under section 206, infra. People v. Carpenter, (1912) 77 Misc. 244, 135 N. Y. S. 593.

Power to pay premiums on bonds of village officers.— The board of trustees is not authorized to pay the premium upon the official bonds of village officers. Matter of Kenmore, (1908) 59 Misc. 388, 110 N. Y. S. 1008.

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Power to purchase fireworks.— Village trustees may not devote village funds to the purchase of fireworks for a public entertainment. Matter of Kenmore, (1908) 59 Misc. 388, 110 N. Y. S. 1008.

Power to appropriate money for fire department parade.— Village trustees may not appropriate moneys for the purpose of enabling the fire department to participate in a parade held outside the village limits. Matter of Kenmore, (1908) 59 Misc. 388, 110 N. Y. S. 1008.

Payment of counsel in investigations under section 4 of the General Municipal Law.— The trustees cannot pay from the public funds the compensation of counsel they employ in a proceeding instituted against them under section 4 of the General Municipal Law. Matter of Kenmore, (1908) 59 Misc. 388, 110 N. Y. S. 1008.

As to costs in such proceedings see GENERAL MUNICIPAL LAW, § 4 note.

Power to appoint collector of water and light rents.— The trustees have no power to designate a person to collect water and light rents where there are separate boards of water and light commissioners. Op. Atty.-Gen. (1912) 210.

Power to employ expert accountant.— It is not within the power of the board of trustees to employ an expert accountant to make a general audit of the books and accounts of the treasurer unless it appears that the village finances cannot be managed and controlled as well without such assistance as with it. Matter of Kenmore, (1908) 59 Misc. 388, 110 N. Y. S. 1008. In this connection see Wakefield v. Brophy, (1910) 67 Misc. 298, 122 N. Y. S. 632.

Power to raise money for band concerts.—Prior to the enactment of subdivision 22-a of the present section a village had no authority to raise money by tax for the giving of band concerts, although the village had adopted a proposition to raise money by the tax for that purpose. See Op. Atty.-Gen. (1911) 357.

Indemnity insurance.— Prior to the enactment of subdivision 27 of the present section a village had no legal right to insure itself against liability for injuries to persons. See Op. Atty.-Gen. (1912) 99, ruling also that a village had no legal right to insure its employees against accident and pay the premium out of the funds of the village. The latter ruling was made also in Op. Atty.-Gen. (1912) 361.

Power to employ attorney as exclusive.— The authority vested in the board of trustees to employ an attorney is exclusive and no other board or official has power to employ attorneys in behalf of the village. Collins v. Saratoga Springs, (1893) 70 Hun 583, 24 N. Y. S. 234, affirmed (1893) 140 N. Y. 637, 35 N. E. 892; People v. Town, (1896) 1 App. Div. 127, 37 N. Y. S. 864; People v. Dunckel, (1910) 69 Misc. 361, 125 N. Y. S. 385. See also Mark v. West Troy, (1893) 69 Hun 442, 23 N. Y. S. 422.

Legal matters as referable to attorney-general.— Legal matters pertaining to village government should be referred to the village attorney and not to the attorney-general. Op. Atty.-Gen. (1899) 430.

Subdivision 15 as inconsistent with Drainage Law.— It was held in Matter of Spring Val. Swamp, (1910) 66 Misc. 206, 123 N. Y. S. 269, affirmed 145 App. Div. 636, 129 N. Y. S. 918, that the power conferred upon the board of trustees by subdivision 15 of the present section was not exclusive, and that the provisions of the Drainage Act of 1869, as amended in 1896, which in terms was made applicable to incorporated villages, was neither hostile to nor inconsistent with the Village Law. See DRAINAGE LAW, § 1 et seq.

Attorney's contract as abrogated by incorporation of village as a city.— Where an attorney agrees with a village under its charter to perform legal services for one year at a certain compensation, and before the expiration of the year the village is made a city, the period of employment is thereby terminated, and no recovery may be had against the city under the contract. Fisher v. Mechanicville, (1916) 172 App. Div. 426, 158 N. Y. S. 908, reversing 94 Misc. 134, 157 N. Y. S. 518.

Cited.— This section was cited in Villa Park Ass'n v. North Hempstead, (1914) 162 App. Div. 45, 146 N. Y. S. 1047, in connection with the construction of section 81 of the Transportation Corporations Law, relating to establishment of water supply districts by town boards. Subdivision 19 of the present section was cited in Waverly v. Waverly Water Co., (1908) 127 App. Div. 440, 111 N. Y. S. 541, affirmed (1909) 194 N. Y. 545, 87 N. E. 1129, in connection with the question of acquisition of water system by a village.

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See infra, § 221 et seq. Subdivision 21 of the present section was cited in Op. Atty.-Gen. (1905) 368, in connection with the question as to the legality of the election of the president of a village as president of the village board of health. Subdivision 21 of the present section was also cited in Bradley v. Union, (1914) 164 App. Div. 565, 150 N. Y. S. 107, in connection with the construction of section 341, relating to actions for damages against village. See infra, § 341 note.

§ 90. Village ordinances. The board of trustees has power to enact, amend and repeal ordinances for the following purposes:

1. Relating to peace and good order generally. To preserve the public peace and good order; to prevent and suppress vice, immorality, disorderly and gambling houses and houses of ill-fame, riots and tumultuous assemblages, unnecessary crowds upon the streets, or in doorways or stairways adjacent thereto, or loitering about such places, and all disorderly, noisy, riotous or tumultuous conduct within the village, disturbing the peace and quiet of the village or any meeting or assembly therein.

2. Animals at large. To restrain the running at large of horses, cattle, sheep, unmuzzled dogs, fowls or other animals, and may authorize the impounding and sale of the same for the penalty and costs of keeping and proceedings, or the killing of such unmuzzled dogs.

3. Fast driving. To regulate or prevent fast riding or driving, or the leaving of horses untied or hitched an unreasonable time in the streets or public places, or the driving of animals on the sidewalks.

4. Amusements. To regulate or prevent coasting, ball playing or any act, amusement or practice, endangering property or persons on the streets or public grounds.

5. Incumbering the streets; encroachments. To regulate or prevent incumbering the streets or public grounds with any material whatever, or any encroachment or projection in, over, or upon any of the streets or public grounds, or any excavations immediately adjacent thereto.

5-a. Barbed wire fences. To forbid the use and maintenance, by owners and occupants of property abutting on public streets or grounds, or barbed wire or similar fences along the boundaries of such streets or grounds.

New. Added by L. 1910, ch. 69, § 1.

6. Parades. To regulate or prevent all parades, exhibitions, and the parade or playing of bands of music upon the streets or public grounds.

7. Blowing of steam. To regulate or prevent the blowing of steam into, upon or over the streets.

8. Shade trees. To protect and preserve shade trees in the streets and public places, and to prevent the hitching of horses to such trees.

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9. Poles and wires; granting franchises. To regulate the erection of telegraph, telephone or electric-light poles, or the stringing of wires in, over or upon the streets or public grounds, or upon, over or in front of any building or buildings; but no franchise, or right, to erect or construct any line of poles or wires to furnish light or power within such village or to build, construct, erect or maintain any additional line of sewer, water or gas pipes, over, along, across, or under any of the streets, avenues, lanes or public grounds of such village shall be granted to any individual, firm, association, copartnership or corporation when such village owns and uses an electric-light plant or water-works, until the question of granting such right or franchise shall have been duly submitted to the qualified electors of such village, at an annual election, or at a special election duly called and held for that purpose, and adopted by a majority of the votes of duly qualified voters cast at such election.

10. Railroad crossings; speed. To regulate the time during which cars, engines or trains may stand upon the street crossings of railroads; to regulate the speed of locomotives and cars, subject to the provisions of the railroad law, and by a two-thirds vote of all the members of the board, to require railroad companies to erect gates or crossings, to employ competent men to attend the same, and to employ competent flagmen at such crossings.

11. Sidewalks. To compel owners or occupants of lands to clear snow, ice, dirt and other obstructions from the sidewalk in front thereof.

12. Fireworks and firearms. To regulate or prevent the discharge of firearms, rockets, gunpowder or other explosives, or the making of bonfires.

13. Inflammable materials. To regulate the use of candles, kerosene, light, fires or burning materials of any kind in barns, stables or other buildings especially liable to take fire.

14. Construction of chimneys and heating apparatus. To regulate the use and construction of chimneys, fire-places, stoves and heating apparatus, and the deposit of ashes, and any member of the board or any person authorized by it may enter, when necessary, in the daytime, any building within the village, to make an examination with reference to the evasion or violation of such ordinance.

15. Gunpowder. To regulate the storing, sale or transportation of gunpowder or other explosives within the village.

16. Fire limits. To prevent the construction or rebuilding of wooden buildings, or the use of any buildings within the fire limits of materials liable to take fire. In addition to an action or proceeding to recover the penalty prescribed by the ordinances for a violation of this subdivision, the board of trustees may present a verified petition to a justice of the supreme court, or to a

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special term of the supreme court of the judicial district, or to the county court or the county judge of a county in which any part of the village is situated, for an order enjoining the violation thereof. Such petition shall state the facts concerning the alleged violation. Upon the presentation of the petition the justice, judge or court shall grant an order requiring such person to appear before him, or before such special term or county court, respectively, on a day specified therein, not more than ten days after the granting thereof, to show cause why such person should not be permanently enjoined from violating such ordinance. A copy of the petition and order shall be served in the manner directed by such order, not less than five days before the return day thereof. On the day specified in such order, the justice, judge or court, before whom the same is returnable, shall hear the proofs of the parties, and may, if deemed necessary and proper, take testimony in relation to the allegations of the petition, or appoint a referee for that purpose. If it appears that such person is violating the ordinance, an order shall be made enjoining him therefrom. If, after the entry of such order in the county clerk's office of a county in which a part of the village is situated, and the service of a copy thereof upon him, or after a substituted service, as the justice, judge or court may direct, such person shall violate such ordinance, such violation shall be deemed a contempt of court, and punishable in the manner provided by the code of civil procedure. Costs upon the application for such injunction may be awarded in favor of and against the parties thereto, in the discretion of the justice, judge or court before whom the petition is heard. If awarded against the village, the costs shall be a village charge.

17. Swimming and bathing. To regulate swimming and bathing in open water, exposed to the public, within or bounding the village.

18. Improper noises. To regulate or prevent the ringing of bells, blowing of horns and steam whistles, and the making of other improper noises in the village.

19. Landing of boats; passengers. To regulate or prevent the landing within the village of excursion boats, or passengers therefrom.

20. Water works and sewerage systems. To punish all violations of the rules of the board of trustees, or of the board of fire, water, light, sewer or cemetery commissioners, which have been approved by the board of trustees, relating to the prevention of fires, the water works, the lighting or sewerage system, or the cemetery of the village.

21. Vulgar language or conduct. To punish profane, vulgar or obscene language or conduct in any street or public place in the village.

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22. Malicious mischief. To punish the wilful and malicious breaking, marring, injury, removal or defacement of any building, fence, awning, sign, sign-board, tree, shrubbery or other ornamental thing in the village, the removal from or piling up before any door or on any sidewalk or street of boxes, casks or other things, the tearing down of any notice or hand-bill lawfully posted, or inciting or inducing dogs to fight in any of the streets or public places in the village.

23. False alarm of fire. To punish the wilful giving of a false alarm of fire.

24. Conduct at fires. To punish insubordination or disorderly conduct at fires, the obstruction of the operations of the fire department or the wilful neglect or refusal to obey or the attempt to prevent or to obstruct the execution of the orders of the trustees or officers of the fire department.

25. Fire-escapes. To require owners of buildings to erect fire-escapes, when necessary for the safety of occupants; and to compel the owners or occupants of a hotel, factory, theater, opera house, music hall, or other place of amusement, assembly hall, church, literary or charitable institution, to provide doors, windows, stairs, escapes or other means of egress from said buildings; and to regulate the attendance and seating therein.

26. Posting bills. To regulate or prohibit the posting of bills.

27. Accumulation of snow, ice or water on buildings adjacent to streets. To compel the owners of buildings adjacent to the streets to prevent the accumulation of snow, ice or water thereon, and to prevent the falling of snow, ice or water from such buildings upon the streets or sidewalks.

28. Powers as to tires on vehicles. To prescribe the width of tires used on vehicles built to carry or carrying a weight of fifteen hundred pounds and upwards over the streets, alleys and public places of the village and provide penalties for a violation, but such ordinance shall apply only to residents of the village and nonresidents regularly engaged in business therein.

29. Keeping of swine. To regulate or prohibit the keeping of swine within the village limits.

New. Added by L. 1916, ch. 199, § 1.

30. Keeping of calves. To regulate the keeping of calves within the village limits.

New. Added by L. 1917, ch. 213, § 1.

This section was derived from Village Law, L. 1897, ch. 414, § 89. Subdivision 9 as amended by L. 1906, ch. 577, § 1; subdivision 28 as added by L. 1899, ch. 391, § 1. Amendments of the section made subsequent to the enactment of the consolidated Village Law are given following the subdivisions affected.

Section 90 of the Village Law of 1897 is now covered by section 91.

Affixing advertisement to property of another: see PENAL LAW, § 121.

Arrest of disorderly person: see infra, § 338.

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Carrying and use of dangerous weapons: see PENAL LAW, § 1897.

Cleaning streets: see infra, § 164.

Consent of local authorities for construction of pipe line across, along or upon any public highway: see TRANSPORTATION CORPORATIONS LAW, § 45.

Construction of pipe line through villages: see TRANSPORTATION CORPORATIONS LAW, § 46.

Construction of telegraph and telephone lines: see TRANSPORTATION CORPORATIONS LAW, § 102.

Discharging firearms: see PENAL LAW, § 1906.

Disorderly conduct on public conveyances: see PENAL LAW, § 720.

"Disorderly house" defined: see PENAL LAW, § 3, subd. 9.

Driving vehicles and animals on sidewalks or side-paths: see PENAL LAW, §§ 1907, 1908.

Establishment and maintenance of free public baths: see GENERAL MUNICIPAL LAW, § 121.

Explosives and combustibles: see PENAL LAW, § 1894.

False alarms of fire and interference with fire-alarm telegraph systems: see PENAL LAW, § 1424.

Fires-escapes in factories: see LABOR LAW, § 79-b, subd. 4.

Horse racing: see PENAL LAW, § 1080 et seq.

Hotel keepers to provide fire-escapes: see GENERAL BUSINESS LAW, § 205; PENAL LAW, § 1905, subd. 1.

Indecency: see PENAL LAW, § 1140 et seq.

Keeping disorderly house: see PENAL LAW, § 1146.

Locomotives must stop at grade crossings: see RAILROAD LAW, § 56.

Maintenance of telegraph or other electric wires as raising presumption of grant: see REAL PROPERTY LAW, § 261.

Making or keeping gunpowder contrary to law: see PENAL LAW, § 1052.

Malicious injury to trees: see PENAL LAW, §§ 1423, 1425.

Neglect of village officer to inspect fire-escapes: see PENAL LAW, § 1905, subd. 2.

Negligently managing and refusing to extinguish fires: see PENAL LAW, § 1900.

Obstructing attempts to extinguish fires: see PENAL LAW, § 1901.

Penal provisions relating to animals: see PENAL LAW, § 180 et seq.

Penal provisions relating to exhibitions: see PENAL LAW, § 830 et seq.

Penal provisions relating to gambling: see PENAL LAW, § 970 et seq.

Penal provisions relating to malicious mischief: see PENAL LAW, § 1420 et seq.

Power of state commissioner of highways to fix width of tires: see HIGHWAY LAW, § 24.

Processions and parades on Sunday: see PENAL LAW, § 2151.

Public sports on Sunday: see PENAL LAW, § 2145.

Riding bicycle on sidewalk or foot-path: see PENAL LAW, § 1909.

Riots and unlawful assemblies: see PENAL LAW, § 2090 et seq.

Running horses on highway: see PENAL LAW, § 194.

Sale of pistols, revolvers and firearms: see PENAL LAW, § 1914.

Sign boards and flagmen at crossings: see RAILROAD LAW, § 53.

Snow and ice on sidewalks: see infra, § 163.

Standard of illuminating power: see GENERAL BUSINESS LAW, § 321.

Standard test and storage of refined petroleum and kerosene oil: see GENERAL BUSINESS LAW, § 303.

Storage of petroleum: see GENERAL BUSINESS LAW, § 302.

Tramps: see PENAL LAW, § 2370 et seq.

Unauthorized manufacture, sale or use of illuminating oils: see PENAL LAW, § 1902.

Use of barbed wire for division fence: see TOWN LAW, § 369.

Village clerk to keep record of all village ordinances: see supra, § 82.

Violation of village ordinance as disorderly conduct: see infra, § 93.

Who are disorderly persons: see Code Crim. Pro., § 899.

Power to compel telephone company to place wires underground.— In the absence of express legislative authority a village has no power to compel a telephone company to place an extension of its existing lines in the streets of the village in underground conduits. Carthage v. Central New York Tele-

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phone, etc., Co., (1906) 185 N. Y. 448, 78 N. E. 165, 113 A. S. R. 932, reversing 110 App. Div. 625, 96 N. Y. S. 919.

As to construction of telegraph and telephone lines, see TRANSPORTATION CORPORATIONS LAW, § 102.

Intent of subdivision 16.—The provision of subdivision 16 of the present section authorizing the board of trustees to prevent the use in any building of materials liable to take fire, is intended to authorize the prevention of the use of such materials in the construction of the building and not to prevent the use of a building already erected for the storage of such materials. Skaneateles v. Hennessey, (1909) 62 Misc. 347, 116 N. Y. S. 788.

Right to injunction prior to enactment of subdivision 16.—Prior to the enactment of subdivision 16 of the present section a village could not invoke the equitable power of the court to restrain the construction of wooden buildings within the fire limits. See Brockport v. Johnston, (1883) 13 Abb. N. Cas. 468; Rochester v. Gutberlett, (1911) 73 Misc. 607, 133 N. Y. S. 541; New Rochelle v. Lang, (1894) 75 Hun 608, 27 N. Y. S. 600.

Subdivision 10 as affected by Railroad Law.—The provision of subdivision 10 of the present section empowering the board of trustees of a village by a two-thirds vote to require railroad companies to erect gates at crossings and to employ competent flagmen thereat was not repealed by section 53 of the Railroad Law. Depew v. Lehigh Val. R. Co., (1914) 85 Misc. 71, 148 N. Y. S. 265.

Construction of ordinance prohibiting bonfires.—It was held in New Rochelle v. Clark, (1892) 65 Hun 140, 19 N. Y. S. 989, that a village ordinance providing that "no hay, straw, chips, shavings, or other combustible substance shall be set on fire or burned in any street at any time, or in any lot of the village except between the rising and setting of the sun," should be construed as prohibiting the setting of fires in the village streets at all times and in village lots at night.

Bicycle riding on sidewalks.—Under subdivision 4 of the present section village authorities have power to prevent the riding of bicycles upon sidewalks, but where such riding is permitted, it must be subjected to reasonable regulations and restrictions included in the ordinance authorizing such use of the sidewalks. Where no regulation has been made section 1907 of the Penal Law applies. Op. Atty.-Gen. (1912) 488. See in this connection Lechner v. Newark, (1896) 19 Misc. 452, 44 N. Y. S. 556.

Power to restrain construction of building where fire limits not established.—The trustees of a village cannot by injunction restrain the erection of a wooden building where they have not exercised the statutory power to enact ordinances establishing fire limits and preventing the erection therein of structures liable to take fire. Skaneateles v. Hennessey, (1909) 62 Misc. 347, 116 N. Y. S. 788.

Validity of ordinance prohibiting the keeping of bees.—The board of trustees of a village is not authorized to pass an ordinance prohibiting the keeping of honey bees in the village. Op. Atty.-Gen. (1911) 361.

Constitutionality of ordinance prohibiting beating of drums etc., in streets.—It was held in People v. Garabed, (1897) 20 Misc. 127, 45 N. Y. S. 827, judgment reversed without opinion 25 App. Div. 624, 49 N. Y. S. 1141, that a village ordinance prohibiting the beating of any drum or tambourine, or making any noise with any instrument for any purpose, without the written permission of the president of the village, was constitutional. To the same effect was the case of Roderick v. Whitson, (1889) 51 Hun 620, 4 N. Y. S. 112.

Ordinance providing penalty for act prohibited by state law.—It has been ruled that under subdivision 1 of the present section a village board of trustees may pass an anti-liquor ordinance providing a penalty for an act which is prohibited by and punishable as a crime by the state law. Op. Atty.-Gen. (1903) 310.

Power to bring action to enjoin encroachment.—Under subdivision 5 of the present section a village may maintain an action to enjoin an alleged encroachment upon a village street. Oxford v. Willoughby, (1905) 181 N. Y. 155, 73 N. E. 677, affirming 87 App. Div. 609, 83 N. Y. S. 1118.

Power under subdivision 9 as controllable by mandamus.—The power conferred upon the board of trustees of the village by subdivision 9 of the present section "to regulate the erection of telegraph, telephone or electric-light

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poles, or the stringing of wires in, over or upon the streets or public grounds," is a power involving discretion upon the part of the board of trustees, and the exercise of this discretion cannot be controlled by mandamus. People v. Monticello, (1901) 35 Misc. 675, 72 N. Y. S. 350.

Cited.—This section was cited in People v. Gross, (1910) 137 App. Div. 77, 122 N. Y. S. 135, in connection with the question of the respective duties of the village president and the street commissioner as to the romoval of nuisances upon the village streets. See supra, § 80 note. Subdivision 9 of the present section was cited in New Union Telephone Co. v. Marsh, (1904) 96 App. Div. 122, 89 N. Y. S. 79; Op. Atty.-Gen. (1906) 630, in connection with the construction of section 102 of the Transportation Corporations Law, relating to the construction of telegraph and telephone lines. Subdivision 18 of the present section was cited in Op. Atty.-Gen. (1914) 149, in connection with the construction of section 288 of the Highway Law, relating to motor vehicles. See HIGHWAY LAW, § 288 note. Subdivision 25 of the present section was cited in Op. Atty.-Gen. (1912) 306, in connection with the question of the authority of the state fire marshal with regard to the enforcement of statutes, ordinances and regulations for the prevention of fires.

§ 90-a. Building and sanitary codes. The board of trustees of any village, whether organized under a general or special act, may, by a majority vote of all of said board at a meeting thereof duly held, taken and recorded by calling the ayes and noes adopt an ordinance to be known as the building code, which shall provide therein rules and regulations for the construction, alteration, removal and inspection of all buildings or structures erected or to be erected within the limits of the village, providing therein and regulating thereby the plans and means of all such construction, alteration or removal of all of such buildings and structures. The board of trustees of any village of the first class or of any village in a county of less than one hundred and fifty thousand population, which adjoins a city of the first class by a majority vote of all of said board, at a meeting thereof duly held, taken and recorded by calling the ayes and noes may also adopt an ordinance to be known as the sanitary code, which shall provide therein rules and regulations for the construction, alteration, removal and inspection of all plumbing and drainage systems in buildings now erected or to be erected upon property within the limits of the village, providing therein and regulating thereby all such construction, alteration or removal of all such plumbing and drainage, and the licensing of plumbers to do such work. The board of trustees shall have authority to provide penalties or punishments for disobedience to any such ordinances in the manner prescribed by section ninety-three of this chapter and may appoint and remove such inspectors and examiners as may be required to properly execute the provisions of said ordinances, and shall possess authority to alter and amend said ordinances from time to time and to issue licenses to plumbers and builders by a like vote. Nothing herein contained shall impair any other power

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conferred by law upon a board of trustees in relation to the same or kindred matters.

New. Added by L. 1910, ch. 202, § 1. It was amended by L. 1915, ch. 36, § 1. This amendment affected the first part of the first sentence by substituting "The board of trustees of any village of the first class, whether organized under a general or special act, or the board of trustees of any village in a county of less then one hundred thousand population according to the last preceding federal census, which county adjoins a city of the first class," in place of "The board of trustees of any village of the first class, whether organized under a general or special act." It was amended by L. 1916, ch. 397, § 1, by which the first part of the above sentence was changed to read as given in the text.

Term "majority" defined: see GENERAL CONSTRUCTION LAW, § 41.

§ 91. Licensing occupations. The board of trustees of a village may, by ordinance, prohibit the pursuit or exercise without a license of any of the following trades or occupations within the village, to wit:

1. The running of public carriages, cabs, hacks, carts, drays, express wagons, or other vehicles for the transportation within the village, for hire, of persons or property, soliciting or running therefor, or for hotels; auctioneering, hawking and peddling, except the peddling of meats, fish, fruit and farm produce.

2. The doing of a retail business in the sale of goods of any description, from canal boats, in the canals, or from the lands by the side of such canals and within the boundary lines thereof, within the limits of the village, except products of the farm and unmanufactured products of the forest.

3. Circuses, theaters, or other exhibitions or performances, the keeping of billiard saloons, bowling alleys, shooting galleries, and other similar places of amusement, for money or hire; or the giving of exhibitions, performances or entertainments in any place where liquor is sold or drunk under a liquor tax certificate.

4. The use of any public hall or opera house; but such place shall not be licensed unless it has suitable and safe means of ingress and egress in case of panic or fire.

If any such trade or occupation shall be so prohibited, the board of trustees shall establish uniform fees for licenses therefor, and the president of the village shall issue a license, specifying the fee to be paid therefor, to such persons as he shall deem fit and proper for such trade or occupation, but such license shall be refused for any of the occupations in the third subdivision above specified which shall, in the judgment of the president, be likely to disturb the peace and order of the village, or be immoral or improper. Every such license shall be countersigned by the clerk of the village, who shall keep a record thereof and of the amount of the fee to be paid therefor; and upon presentation of such license to the treasurer of the village, so signed and countersigned, and the

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payment to the treasurer of such fee, the treasurer shall indorse thereon his receipt of the license fee. The license shall not take effect until the receipt of the treasurer shall have been indorsed thereon. Any applicant, who shall have been refused such license by the president, may apply to the board of trustees therefor at a meeting thereof; and the same may be granted or refused by the board. The president may suspend any such license until the next meeting of the board of trustees, and thereupon the said license may be revoked or continued by the board.

This section was derived from Village Law, L. 1897, ch. 414, § 90.

Section 91 of the Village Law of 1897 is now covered by section 92.

Auctions and auctioneers: see GENERAL BUSINESS LAW, §§ 21–28.

Contracts for use of streets for hack stands: see PENAL LAW, § 444.

Discrimination against nonresidents: see GENERAL MUNICIPAL LAW, § 80.

Peddlers generally: see GENERAL BUSINESS LAW, § 30 et seq.

Peddling and hawking farm produce: see GENERAL MUNICIPAL LAW, § 81.

Penal provisions relating to exhibitions: see PENAL LAW, § 830 et seq.

Power of cities to regulate and license occupations: see GENERAL CITY LAW, § 20.

Unlicensed peddlers: see PENAL LAW, § 1610.

Validity of legislation regulating auctioneering.— Selling at auction is essentially public in its character, and properly within the power of the state to regulate. Port Jervis v. Close, (1889) 53 Hun 634, 6 N. Y. S. 211, 2 Silv. Sup. 501. See also Deposit v. Pitts, (1879) 18 Hun 475.

Authority to license peddling.— Under the present section the trustees of a village possess ample authority to designate a fee for the privilege of hawking and peddling in the public streets, and to prohibit any person from engaging in those pursuits unless he pays the license fee. Jones v. Foster, (1899) 43 App. Div. 33, 59 N. Y. S. 738.

Nonresident tradesman taking orders and delivering goods pursuant thereto as peddler.— In Stamford v. Fisher, (1893) 140 N. Y. 187, 35 N. E. 500, affirming 63 Hun 123, 17 N. Y. S. 609, which was an action to recover a penalty for the violation of a village ordinance prohibiting hawking and peddling in the public streets without a license, it appeared that the defendant, who had a store in another place, solicited orders of the plaintiff's citizens, and delivered groceries for family use pursuant to the orders; that he had a wagon with which he made trips to the village, filling his previous orders and taking new ones at the various houses. It did not appear that he sold or offered for sale any goods upon the streets. It was held that the evidence failed to establish a violation of the ordinance.

Express company as subject to ordinance.—An express company using vehicles in carrying on its business in a village is subject to an ordinance prohibiting the pursuit or exercise without a license of the trades or occupations specified in the present section. Op. Atty.-Gen. (1911) 570.

Peddling of meats and farm produce by speculators.—The hawking or peddling of meats or farm produce may not be prohibited by a village even by persons who have purchased the same from others and are speculating therein. Op. Atty.-Gen. (1911) 411.

Scope of ordinance prohibiting solicitation of custom.— It was held in Niagara Falls v. Salt, (1887) 45 Hun 41, 9 N. Y. St. Rep. 577, that a village ordinance prohibiting persons, within the corporate limits, from running for or soliciting persons for any public or private conveyance or for hotels, etc., was not limited in its application to solicitation in public places or on the streets of the village, but prevented such solicitation anywhere within the village limits, even upon a person's own property.

Cited.—This section was cited in Op. Atty.-Gen. (1914) 342, in connection with the question of the right of a village board of health to require a permit from milk dealers. See PUBLIC HEALTH LAW, § 21.

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§ 92. Definition of village ordinances. A village ordinance includes also a rule, by-law, order or regulation of the board of trustees, or of the board of fire, water, light, sewer or cemetery commissioners, approved by the board of trustees, for the violation of which a penalty is imposed; and each provision of this chapter relating to the enforcement of an ordinance applies to such a rule, by-law, order or regulation.

This section was derived from Village Law, L. 1897, ch. 414, § 91.
Section 92 of the Village Law of 1897 is now covered by section 93.
Village ordinance as evidence: see Code Civ. Pro., § 941.
Cited.—This section was cited in Op. Atty.-Gen. (1914) 203, in connection with the construction of sections 288 and 290 of the Highway Law, relating to motor vehicles.

§ 93. Violation of ordinances. The board of trustees of a village may enforce obedience to its ordinances by prescribing therein penalties for each violation thereof, not exceeding one hundred dollars for any offense. In addition to the penalty the board may also ordain that a violation thereof shall constitute disorderly conduct, and that the person violating the same shall be a disorderly person; and such violation shall constitute disorderly conduct, and such person shall be a disorderly person. An ordinance of a village shall not declare any conduct to be disorderly conduct, or that the person violating the same shall be a disorderly person, if any statute of the state shall declare such conduct to be disorderly or constitute the person a disorderly person. Every such ordinance shall be void in so far as it violates the provisions of this section.

This section was derived from Village Law, L. 1897, ch. 414, § 92.
Section 93 of the Village Law of 1897 is now covered by section 94.
Arrest of disorderly persons: see infra, § 338.
Who are disorderly persons: see Code Crim. Pro., § 899.
Validity of ordinance making the keeping of gambling house disorderly conduct.— It has been held that a village ordinance which prohibits both the keeping and the use of a place for gambling and provides that a violation thereof shall constitute disorderly conduct and that the offender shall be a disorderly person is not within the inhibition of the present section which provides that a village ordinance shall not declare any conduct to be disorderly conduct, or that the person violating the same shall be a disorderly person, if any statute of the state shall declare such conduct to be disorderly or constitute the person a disorderly person, although by section 899 (4) of the Code of Criminal Procedure keepers of houses for the resort of gamesters are declared to be disorderly persons. People v. Earing, (1911) 71 Misc. 615, 130 N. Y. S. 1099, affirmed without opinion 146 App. Div. 903, 133 N. Y. S. 1136.
Cited.—This section was cited in Chapman v. Selover, (1916) 172 App. Div. 858, 159 N. Y. S. 632, in connection with the construction of section 338, relating to arrest of disorderly persons. See infra, § 338 note. The present section was also cited in Op. Atty.-Gen. (1914) 203, in connection with the construction of sections 288 and 290 of the Highway Law, relating to motor vehicles.

§ 94. Approval by board of trustees of ordinances of separate board. An ordinance adopted by the board of fire, water,

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light or cemetery commissioners for the violation of which a penalty is imposed must be approved by the board of trustees. Upon its adoption such an ordinance must be certified to the board of trustees, and upon its approval becomes an ordinance of the village with the same force and effect and enforceable in the same manner as if it had been originally adopted by the board of trustees.

This section was derived from Village Law, L. 1897, ch. 414, § 93.
Section 94 of the Village Law of 1897 is now covered by section 95.
Village ordinance as evidence: see Code Civ. Pro., § 941.

§ 95. When ordinances to take effect. Every ordinance hereafter adopted or approved by the board of trustees of a village shall be entered in its minutes and published in the official paper of the village, and also in each other newspaper actually printed in the village, once each week for two consecutive weeks, and a printed copy thereof posted conspicuously in at least three public places in the village for at least ten days before the same shall take effect, and an affidavit of the publication and posting thereof shall be filed with the clerk. But such an ordinance shall take effect from the date of its service as against a person served personally with a copy thereof, certified by the village clerk under the corporate seal of the village, and showing the date of its passage and entry in the minutes.

This section was derived from Village Law, L. 1897, ch. 414, § 94.
Necessity of publication of ordinance.—An ordinance which is not published and posted as required by the present section is not effective. Shaw v. New York Cent., etc., R. Co., (1903) 85 App. Div. 137, 83 N. Y. S. 91; People v. Chapman, (1914) 88 Misc. 469, 152 N. Y. S. 204; Watkins v. Hillerman, (1893) 73 Hun 317, 26 N. Y. S. 252; Kneib v. People, (1875) 6 Hun 238.

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ARTICLE 5

FINANCES

Section 100. Fiscal year.
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Section 138. Proceedings generally; redemption.
138-a. [Town receiver of taxes as village receiver.]
138-b. [Certification and collection of taxes.]
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§ 100. Fiscal year. The fiscal year begins on the first day of the calendar month in which the annual election is to be held as provided in section fifty-five of this act and ends on the last day of the calendar month preceding such annual election. No expenditures shall be made, nor indebtedness incurred, by the village, during the first month of the fiscal year, except for current expenses. The term "assessors," as used in this article, includes the board of trustees of a village which has no separate board of assessors.

This section was derived from Village Law, L. 1897, ch. 414, § 100. It was amended by L. 1909, ch. 472, § 1. Before this amendment the fiscal year began on the first day of March, and the prohibition as to incurring debts applied to the month of March.

Election of assessors: see supra, § 48.

Month in statute: see GENERAL CONSTRUCTION LAW, § 31.

Provisions applicable to a village embracing the entire territory of a town: see infra, § 322 et seq.

Provisions applicable to certain villages: see infra, § 310 et seq.

Year in statute: see GENERAL CONSTRUCTION LAW, § 58.

§ 101. Village funds. Village funds are classified as follows:

1. The street fund, composed of the poll tax, and all moneys received from taxation or otherwise for the construction, care or maintenance of bridges, streets, crosswalks or sidewalks, the paving and grading of streets, and for the care and maintenance of public parks and squares.

2. The water fund, composed of all moneys received from taxation or otherwise for supplying the village with water under a contract therefor, or for the purchase, acquisition, construction, care, extension or maintenance of a water-works system, all water rents, all sums received from assessments for fire protection or for the sale of water to be used outside the village, and penalties recovered for violations of the ordinances of the department.

3. The light fund, composed of all moneys received from taxation or otherwise for supplying the village with light under a contract therefor, or for the purchase, acquisition, construction, care, extension or maintenance of a lighting system, light rents and penalties recovered for violations of the ordinances of the department.

4. The sewer fund, composed of all moneys received from taxation or otherwise for the construction, care, extension and maintenance of a sewer or a sewer system, or for the purchase or acquisition of real property therefor.

5. The cemetery fund, composed of all moneys received from taxation or otherwise for the purchase, acquisition, construction,

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care and maintenance of a cemetery, all moneys received from the sale or use of cemetery lots, and all penalties recovered for violations of the ordinances of the department.

6. The water sinking fund, composed of all sums set apart by the board of water commissioners for that purpose, with all interest or other income thereon.

7. The light sinking fund, composed of all sums set apart by the board of light commissioners for that purpose, with all interest or other income thereon.

8. The general fund, composed of all moneys received from taxation or otherwise for a purpose not specified in either of the foregoing subdivisions, nor included in any other fund.

9. A special fund may also be created from time to time, composed of a sum set apart as directed by a proposition, or by the board of trustees, for a purpose not otherwise specified in this section. When all charges against such special fund have been paid, the surplus, if any, may be transferred to the general fund.

Expenditures for a purpose specified in either subdivision must be made from the fund therein described. The expense of acquiring real property for the laying out, alteration or widening of a street, or for a public park or square, and the compensation therefor, are a charge upon the general fund.

This section was derived from Village Law, L. 1897, ch. 414, § 101.

Provision as to expenditures as mandatory.—The provision of the present section that "expenditures for a purpose specified in this subdivision must be made from the fund therein described," is mandatory, and cannot be rightfully disregarded. Op. Atty.-Gen. (1909) 903.

Special fire house fund.— Subdivision 9 of the present section authorizes the board of village trustees to create a special fund for the purpose of erecting a fire house and to appropriate from the general fund the surplus transferred from the special fund created for the purchase of the site for the fire house. 8 St. Dept. Rep. 594.

Cited.—This section was cited in Op. Atty.-Gen. (1909) 648, in the discussion of the question of raising money to improve a village street in connection with the construction of a state and county highway. See infra, § 128 note. The section was cited in People v. Pierce, (1909) 64 Misc. 627, 119 N. Y. S. 21, in connection with the question of extension of village water system. See infra, § 224 note. The present section was also cited in 9 St. Dept. Rep. 536, in connection with the question of emergency expenditures by the village board of health. See infra, § 128 note.

§ 101-a. Application of surplus moneys of a department. If there shall be outstanding no obligations of the village on account of a particular department and if after the payment of the current expenses of such department there shall remain a surplus in the fund of that department such surplus may be applied to the payment of any existing obligation of the village or transferred to the general fund.

New. Added by L. 1916, ch. 52, § 1.

Cited.— This section was cited in 9 St. Dept. Rep. 508, in connection with the question of disposition of surplus moneys in village water department. The

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present section was cited in 9 St. Dept. Rep. 536, in connection with the question of emergency expenditures of the village board of health. See infra, § 128 note.

§ 102. Annual financial statement. The board of trustees shall, after the close of each fiscal year, and at least ten days before the next annual election, make a statement of the total amount of village taxes estimated by them as necessary to be raised during the then next fiscal year, specifying the amount for each fund. The board shall cause the annual report of the treasurer for the last preceding fiscal year and such statement made by them to be published and posted for at least one week prior to the annual election, in the same manner as the notice of such annual election.

This section was derived from Village Law, L 1897, ch. 414, § 102.
Report of village treasurer: see supra, § 81.

§ 103. Poll tax. Unless a village decides not to impose a poll tax, all men, between the ages of twenty-one and seventy years, residing in the village, are liable to an annual poll tax of one dollar, except exempt firemen, active members of the fire department of the village, honorably discharged soldiers and sailors who lost an arm or leg in the service of the United States during the late war, or who are unable to perform manual labor by reason of injuries received or disabilities incurred in such service, clergymen and priests of every denomination, paupers, idiots and lunatics. No personal property is exempt from levy and sale in the collection of a poll tax or the penalty for the non-payment thereof, either upon a village tax warrant or upon an execution issued upon a judgment for the recovery of such poll tax or penalty. The board of trustees of a village may adopt ordinances not inconsistent with law for the enforcing of the collection of such poll tax by action, or may provide by ordinance for the imposition of a penalty in case of a failure to pay such poll tax. A proposition may be adopted at an annual election to the effect that no poll tax be thereafter imposed in the village. Such proposition may be revoked at an annual election, and if revoked, the poll tax shall be imposed as if the proposition for exemption had not been adopted.

This section was derived from Village Law, L. 1897, ch. 414, § 103.
Village ordinances defined: see supra, § 92.
Violation of ordinances: see supra, § 93.
When ordinances to take effect: see supra, § 95.

Personal property as exempt from poll tax collection.— All personal property is liable for the collection of the village poll tax. Op. Atty.-Gen. (1903) 299.

Section as applicable to village incorporated under special act.—The provisions of the present section are applicable to a village incorporated under a special act. Op. Atty.-Gen. (1904) 302.

Cited.—This section was cited in Trumbull v. Palmer, (1904) 42 Misc. 628, 87 N. Y. S. 614, in connection with the question of the duty of the assessors

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to enter on the assessment roll the names and property of persons liable to the poll tax. See infra, § 104 note. The present section was cited in Op. Atty.-Gen. (1908) 517, in connection with the question whether a fireman belonging to a fire company in one town but residing and voting in another was exempt from the poll tax imposed by former section 33 of the Highway Law (not repealed).

§ 104. Annual assessment-roll. The assessors of a village shall, on or before the first Tuesday of the fourth month of the fiscal year, if a village of the first or second class, and on or before the first Tuesday of the third month of the fiscal year, if a village of the third or fourth class, prepare an assessment-roll of the persons and property taxable within the village in the same manner and form as is required by law for the preparation of a town assessment-roll. They shall also enter on such roll the names of all persons liable to a poll tax. The assessors of a village of the third or fourth class, included wholly within a town, and in any village wholly within a town where no assessors are elected or appointed, the trustees acting as assessors may, and upon the adoption of a proposition therefor at an annual election, shall adopt the assessment-roll of the town of the last preceding year as the basis of their assessment, so far as practicable. If such town roll be adopted the assessors shall copy therefrom a description of all real property of the village and the value thereof as the same appears thereon; also all personal property and the value thereof assessed on such town roll to residents of the village, or to corporations taxable therefor therein, together with the names of the persons or corporations, respectively, to which such real or personal property is or should be assessed. Where the town assessment-roll is adopted and the valuation of any taxable property can not be ascertained therefrom, or where the value of such property shall have increased or diminished since the last assessment-roll of the town was completed, or an error, mistake or omission on the part of the town assessors shall have been made in the description or valuation of taxable property, the assessors shall ascertain the true value of the property to be taxed from the best evidence available.

This section was derived from Village Law, L. 1897, ch. 414, § 104. It was amended by L. 1909, ch. 472, § 1, which substituted "the fourth of March" for "June" and "the third month of the fiscal year" for "May" in the first sentence.

Exemption of plank-road and turnpike corporations from taxation: see TRANSPORTATION CORPORATIONS LAW, § 141.

Preparation of assessment-roll: see TAX LAW, § 21.

Taxable property generally and place of taxation: see TAX LAW, §§ 2–15.

Taxation of bridge corporations by villages: see TRANSPORTATION CORPORATIONS LAW, § 141. *Pipe line corporations:* see TRANSPORTATION CORPORATIONS LAW, § 54.

When assessment to be considered as made.—An assessment must be considered to have been made as of the date required by the statute, and whether or not property is taxable must be determined as of that date. People v. Keefe, (1907) 119 App. Div. 713, 104 N. Y. S. 154, affirmed (1908) 190 N. Y.

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555, 83 N. E. 1130. See also New York v. Smith, (1901) 61 App. Div. 407, 70 N. Y. S. 702.

Necessity of proper description of property.— A proper description in the assessment roll of property taxed is essential to the validity of a tax thereon. Rupert v. North Pelham, (1910) 139 App. Div. 302, 123 N. Y. S. 944, holding that a village assessment roll which described property taxed merely as "House and Lot, No. 54," without referring to any authenticated record, map, plat, or the like, was fatally defective. In this connection see Allter v. St. Johnsville, (1909) 130 App. Div. 297, 114 N. Y. S. 355; Lawton v. New Rochelle, (1906) 114 App. Div. 883, 100 N. Y. S. 284; Buffalo Loan, etc., Co. v. Depew Mfg. Co., (1910) 66 Misc. 630, 121 N. Y. S. 900; Noxon v. New Rochelle, (1909) 63 Misc. 232, 116 N. Y. S. 822.

Effect of failure to enter on assessment roll names and property liable to poll tax.— The failure of village assessors to enter on the assessment roll the names and taxable property of all persons liable to the poll tax renders the tax levy void. Trumbull v. Palmer, (1904) 42 Misc. 628, 87 N. Y. S. 614, judgment modified 104 App. Div. 51, 93 N. Y. S. 349.

Copying from town assessment roll.— Where village assessors adopt the town assessment roll as the basis of their assessment and copy the description and valuation from that roll, the word "exempt" opposite a description therein should be considered as a part of the description and should be copied, it being the intent and meaning of the statute that so much of the town assessment roll should be copied as fixes the basis upon which the tax should be levied. Clark v. Smith, (1900) 31 Misc. 490, 65 N. Y. S. 646, holding, however, that the omission from the copy made by the assessors of the word "exempt" did not affect the right of the collector to levy under a warrant issued on the basis of the copy.

Omission of inapplicable town roll forms.— The provision of the present section requiring village assessors to prepare assessment rolls "in the same manner and form as is required by law for the preparation of a town assessment roll," does not require the preparation and keeping of village assessment rolls in precisely the same form and manner as is required of towns by section 21 of the Tax Law, but the various columns therein set out which are inappropriate to villages may be omitted. Op. Atty.-Gen. (1911) 639. In this connection see People v. Willis, (1892) 133 N. Y. 383, 31 N. E. 225.

Assessment for local improvement.— The assessors have nothing to do with making or collecting an assessment for a local improvement; such an assessment, therefore, has no place in the annual assessment roll, but belongs in the tax levy (section 110) which is solely the work of the trustees, who are authorized by section 168 to include such assessments in the annual tax levy. Allter v. St. Johnsville, (1909) 130 App. Div. 297, 114 N. Y. S. 355.

Liability of assessors for errors.— The assessors in determining what property is subject to and what is exempt from taxation, act judicially, and are not personally liable for errors committed in arriving at their conclusions upon the subject. Dubois v. Parcells, (1909) 118 N. Y. S. 615. See also Barhyte v. Shepherd, (1866) 35 N. Y. 238, overruling Prosser v. Secor, (1849) 5 Barb. 607; Vail v. Owen, (1854) 19 Barb. 22. Compare National Bank v. Elmira, (1873) 53 N. Y. 49.

Review of assessment.— Where the board of village assessors has jurisdiction, and has acted, mandamus will not lie to compel it to act in a particular way. Certiorari is the proper remedy to review its acts. People v. Keefe, (1907) 119 App. Div. 713, 104 N. Y. S. 154, affirmed (1908) 190 N. Y. 555, 83 N. E. 1130.

Constitutionality of county tax act depriving villages of right to assess and collect taxes.— It was held in People v. Pelham, (1915) 215 N. Y. 374, 109 N. E. 513, reversing 166 App. Div. 779, 152 N. Y. S. 428, that the Westchester County Tax Act (L. 1914, ch. 510), which established a new and complete scheme for the assessment and collection of taxes within each town in the county, whether for state, county, town, or village purposes, was an invasion of the local rights of the incorporated villages within the county in violation of the home rule provisions of the state constitution (article 10, section 2), and that so far as the act attempted to deprive incorporated villages of their right to assess and collect taxes for village purposes, it was unconstitutional and void.

Cited.— This section was cited in People v. Gray, (1906) 185 N. Y. 196, 77 N. E. 1172, reversing 109 App. Div. 116, 95 N. Y. S. 825, in connection

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with the construction of section 10 of the Tax Law, relating to taxation of real property divided by line of tax district. The section was cited in Upper Nyack v. Jewett, (1903) 86 App. Div. 254, 83 N. Y. S. 838, affirmed (1905) 181 N. Y. 514 mem., in connection with the construction of section 21 of the Tax Law, relating to preparation of assessment roll.

105. Meeting of assessors to hear complaints. The assessors shall, in a village of the first or second class, at least one week before the first Tuesday of the fourth month in the fiscal year, and in a village of the third or fourth class, at least one week before the first Tuesday of the third month in the fiscal year, cause a notice to be published in each newspaper published in the village, and posted in at least five conspicuous public places in the village, that on such first Tuesday of the fourth or third month of the fiscal year, as the case may be, at a specified place and during four consecutive hours to be named, they will meet for the purpose of completing the assessment-roll, and of hearing and determining complaints in relation thereto, and they may adjourn such meeting from day to day, not later than Saturday then next succeeding. A copy of such assessment-roll shall be deposited with the village clerk at least five days prior to such first Tuesday of the fourth or third month of the fiscal year, as the case may be and shall be open for inspection by the inhabitants and taxpayers of such village at all times during business hours of such days. Village assessors possess all the powers and are subject to all the duties of town assessors in hearing and determining complaints as to assessments. If the village is one in which the assessment-roll is required to be prepared by copying from the assessment-roll of the town, the assessors at such meeting shall not hear any complaint as to valuation which has not been changed, except upon proof of a change in the property or in the ownership or valuation since the town assessment was completed.

This section was derived from Village Law, L. 1897, ch. 414, § 105. It was amended by L. 1909, ch. 472, § 1, by substituting "fourth" and "third" month in or of the "fiscal year" in the place of "June" and "May", so as to make the reading conform to the amendment to section 104 by L. 1909, ch. 472, § 1.

Hearing of complaints: see TAX LAW, § 37.

Failure to hold meeting on date fixed in notice.—The failure of the assessors to hold any meeting to hear complaints on the date fixed by the notice is a fatal jurisdictional defect. Trumbull v. Palmer, (1905) 104 App. Div. 51, 93 N. Y. S. 349, modifying judgment 42 Misc. 628, 87 N. Y. S. 614.

Provision for adjournment from day to day as directory.—The provision of the present section as to adjournment from day to day is directory merely. People v. Blake, (1911) 72 Misc. 646, 132 N. Y. S. 191.

Publication of notice.—Village assessors do not fulfill the statutory requirements as to grievance day when they publish the notice of their meeting in but one of the two village newspapers, and name three hours for hearing instead of four. Trumbull v. Palmer, (1905) 104 App. Div. 51, 93 N. Y. S. 349, modifying judgment 42 Misc. 628, 87 N. Y. S. 614.

Cited.— This section was cited in New York v. Smith, (1901) 61 App. Div. 407, 70 N. Y. S. 702, in connection with the question of change in valuation of property on the assessment roll after the completion of the roll. See infra, § 106 note.

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§ 106. Completion and verification of assessment-roll. When the assessors, or a majority of them, shall have completed the village assessment-roll, they shall severally make, subscribe and attach to such roll, an oath, in substantially the same form as is required of town assessors by the tax law, if such roll was originally prepared by them; or, if such roll was prepared by copying from the assessment-roll of the town, an oath, to the effect that such roll contains, to the best of their knowledge and belief, a true statement, of the property, persons and corporations liable to assessment and taxation within the village, as the same appears upon the assessment-roll of the town in which the village is situated, and, if in making such assessment the valuation of any property has been changed, or any new or additional assessment has been made, that in changing such valuation or in making such new or additional assessment, they have estimated the value of the real estate at the sums which a majority of the assessors have decided to be the full value thereof, and that the personal property so assessed is assessed at the full value thereof, according to their best knowledge and belief. The roll as so completed and verified shall be filed with the village clerk, on or before the second Tuesday in the fourth month of the fiscal year in villages of the first or second class, and on or before the second Tuesday in the third month of the fiscal year in villages of the third or fourth class.

This section was derived from Village Law, L. 1897, ch. 414, § 106. It was amended by L. 1909, ch. 472, § 1, by substituting "the fourth month of the fiscal year" for "June" and "the third month of the fiscal year" for "May" in the last sentence.

Correction and verification of tax-roll: see TAX LAW, § 38.

Assessment roll and tax levy distinguished.—The assessment roll and the tax levy are entirely distinct and depend for their existence on the acts of different officials. The assessment roll is prepared and completed by the assessors and filed by them with the village clerk. Thereafter the board of trustees prepare the annual tax levy (section 110), which is in the nature of a process for the collection of the tax. Allter v. St. Johnsville, (1909) 130 App. Div. 297, 114 N. Y. S. 355.

Delay in filing roll as affecting assessment.—The provision of the statute relating to the time of filing the completed and verified assessment roll is directory merely, and delay in filing does not vitiate the assessment. People v. Blake, (1911) 72 Misc. 646, 132 N. Y. S. 191.

Conclusiveness of assessment roll.—The assessment roll when finally completed and filed with the clerk stands as a judgment, and so long as it remains in force no action will lie to recover back a tax even though the payment is enforced by levy and sale of property. Sherman v. Clifton Springs, (1882) 27 Hun 390.

Power to change valuation after completion of roll.—After the completion of the assessment roll pursuant to the notice prescribed in section 105, *supra*, the assessors are without jurisdiction to alter the valuation of property assessed thereon. New York v. Smith, (1901) 61 App. Div. 407, 70 N. Y. S. 702. See also People v. Forrest, (1884) 96 N. Y. 544.

Premature verification of roll.—A verification of the assessment roll made by the assessors on the first completion of the roll and before grievances are heard and corrections made on the day appointed for that purpose, is of no effect. Smith v. Mosher, (1890) 56 Hun 643 mem., 9 N. Y. S. 786.

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§ 107. Failure to hold meeting. If the meeting for completing the village assessment-roll and hearing complaints in relation thereto is not held on the first Tuesday in the third or fourth month of the fiscal year, as the case may be, each of the assessors shall forfeit to the village ten dollars, and they shall, by resolution, fix another time therefor, and give notice thereof at least ten days prior thereto by publication thereof, in the same manner as for the first meeting, and by posting copies thereof in at least five conspicuous places in the village. The assessors shall meet accordingly at the time and place appointed, shall hear complaints, complete the assessment-roll, and file the same on or before the fourth day after such meeting, in the same manner as near as may be as if their annual meeting had been held as required by law. If the completed assessment-roll shall not be so filed on or before the fourth day after the meeting for completing the same and hearing complaints in relation thereto, in either case, the assessment shall not on that account be invalid, but such roll shall be filed in like manner as soon as may be thereafter and each assessor shall forfeit to the village five dollars for each day of such neglect.

This section was derived from Village Law, L. 1897, ch. 414, § 107. It was amended by L. 1909, ch. 472, § 1, by which "the third or fourth month of the fiscal year" was substituted for "May or June" in the first sentence.

Cited.— This section was cited in New York v. Smith, (1901) 61 App. Div. 407, 70 N. Y. S. 702, in connection with the question of change in valuation of property after completion of assessment roll. See supra, § 106 note.

§ 108. Notice of completion of annual assessment-roll. After completing and filing the annual assessment-roll, and on or before the third Tuesday of June in villages of the first or second class, and on or before the third Tuesday in May in villages of the third or fourth class, the assessors shall cause notice thereof to be published at least once in the official paper, if any, and copies of such notice posted in not less than five public places in the village, specifying the date of filing, and that the same will remain on file with the clerk, subject to public inspection, for fifteen days after the date of such notice.

This section was derived from Village Law, L. 1897, ch. 414, § 108. It was amended by L. 1909, ch. 472, § 1. It was again amended by L. 1913, ch. 378, § 1, which changed the first word in the section from "Upon" to "After", and substituted "third" for "second" preceding the word "Tuesday" wherever the same occurs.

Effect upon collector's warrant of failure to give statutory notice.—It has been held that a village tax collector's warrant is not invalidated by the failure of the village assessors to post and publish, for fifteen days, the statutory notice relative to the completion and filing of the assessment roll, nor by the fact that the warrant is delivered to the collector before the fifteen days have expired. Clark v. Smith, (1900) 31 Misc. 490, 65 N. Y. S. 646.

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Cited.— This section was cited in New York v. Smith, (1901) 61 App. Div. 407, 70 N. Y. S. 702, in connection with the question of change in valuation of property assessed, after the completion of the assessment roll. See supra, § 106 note.

§ 109. Certiorari to review assessment. An application for a writ of certiorari to review the assessment-roll may be made within such fifteen days in the manner provided by the tax law.

This section was derived from Village Law, L. 1897, ch. 414, § 109.

Procedure under certiorari: see TAX LAW, § 290 et seq.

Character of proceeding.— Certiorari to review a village assessment is a proceeding under section 293 of the Tax Law. People v. Odell, (1908) 129 App. Div. 475, 114 N. Y. S. 199; Op. Atty.-Gen. (1912) 388.

Necessity of petition for certiorari within fifteen days.— An assessment cannot be reviewed by certiorari unless the petition therefor is presented within fifteen days after the completion of the assessment roll, even though the assessment be void. People v. Dimond, (1907) 122 App. Div. 459, 106 N. Y. S. 832.

Objections on appeal not specified before assessors on grievance day.— Objections to the validity of a village assessment not specified and presented to the board of assessors on grievance day cannot be considered by the court of appeals upon an appeal from an order of the appellate division affirming a judgment of the special term vacating an assessment in a certiorari proceeding. People v. Gray, (1906) 185 N. Y. 196, 77 N. E. 172, reversing order 109 App. Div. 116, 95 N. Y. S. 825.

§ 110. Annual tax levy. Upon the expiration of such fifteen days, the board of trustees shall levy the tax for the current fiscal year, which must include the following items:

1. Such sums as shall have been authorized by the last preceding annual election, or by a special election for which a special tax warrant has not been issued.

2. The total amount of the indebtedness of the village lawfully contracted, which will become due and payable during the current fiscal year.

3. Such sum as the board deems necessary in addition to the poll tax to meet the expenditures from the street fund for the current fiscal year, not exceeding one-half of one per centum of the total valuation of the property assessed upon the annual assessment-roll of the last preceding year.

4. Such additional sums as shall be deemed necessary to meet all other expenditures of the village for the current fiscal year, not exceeding one-half of one per centum of such total valuation.

5. The poll tax.

6. In all villages which shall, pursuant to section fifty-two of this act, hereafter adopt a proposition to hold their annual election in June, the board of trustees of such village shall in the first annual tax levy, after the adoption of such a proposition, include such additional sums as shall be deemed necessary to meet all expenditures of the village for the period from March first to June first next preceding such annual tax levy, but not exceeding one-quarter of one per centum upon such total valu-

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ation, and in all villages which have heretofore adopted such a proposition, the board of trustees shall include in the first annual tax levy after this act takes effect, such additional sums as shall be deemed necessary to meet all expenditures of the village for the period from March first to June first next preceding such annual tax levy, but not to exceed one-quarter of one per centum upon such total valuation.

If by reason of an actual or alleged error or defect in the assessment-roll of the last preceding fiscal year, any taxes authorized and intended to be levied thereby are not paid, or if a special tax warrant has been returned and taxes levied therein remain unpaid, the amount thereof may be levied upon the same property or against the same person upon the annual assessment-roll of the current year. The tax roll shall be made in duplicate and upon its completion the clerk shall indorse upon each duplicate the date thereof. The completed assessment-roll shall be presumptive evidence of the facts therein stated.

This section was derived from Village Law, L. 1897, ch. 414, § 110. It was amended by L. 1909, ch. 472, § 1, by which subdivision 6 was added to the section.

Annual sales for non-payment of taxes: see infra, § 133.

Assessment roll and tax levy distinguished: see supra, § 106 note.

Payment for property acquired for street improvement: see infra, § 158.

Support and maintenance of charitable and other institutions: see GENERAL MUNICIPAL LAW, § 87.

When real property to be sold for unpaid tax: see infra, § 119.

Scope of section.— The present section states the purposes for which taxes may be levied by the board of trustees of a village without further authorization from the taxpayers, and limits the amount thereof. The board of trustees may, without further vote by the taxpayers, levy a sum sufficient to meet (1) expenditures authorized by the annual or special elections, (2) the amount of indebtedness due and payable during the year, (3) a sum not exceeding one-half of one per centum for the street fund, (4) an additional sum not exceeding one-half of one per centum for other expenses, and (5) the poll tax. The legislature intended to limit the authority of the board of trustees to levy a tax to pay current operating expenses to not more than one per centum of the total valuation of taxable property, of which not more than one-half could be used for street purposes and one-half for other objects. If greater sums be needed to pay current operating expenses, it was the intention of the legislature that the necessity therefor should first be passed upon by the taxpayers. 9 St. Dept. Rep. 500. In this connection see Op. Atty.-Gen. (1907) 555; Op. Atty.-Gen. (1903) 307.

Mandamus to compel trustees to include items in tax levy.— If village trustees refuse to include proper items of village expense in the tax levy mandamus will lie to compel them to do so. People v. Pierce, (1909) 64 Misc. 627, 119 N. Y. S. 21.

Annual rental on lighting contract.— The annual rental due on a village lighting contract is a current operating expense which must be included in and as a part of the sum to be levied pursuant to subdivision 4 of the present section, and is not "indebtedness" lawfully contracted within the meaning of that term as employed in subdivision 2. 9 St. Dept. Rep. 500.

Necessity for trustees to insert amount of tax against each person on tax roll.— The carrying out of the amount to be collected of each person named in the tax roll is a duty devolving upon the board of trustees and cannot be delegated to the village clerk. Upper Nyack v. Jewett, (1903) 86 App. Div. 254, 83 N. Y. S. 838, affirmed (1905) 181 N. Y. 514, 73 N. E. 1133. See also People v. Hagadorn, (1887) 104 N. Y. 516, 10 N. E. 891.

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Cited.— This section was cited in Op. Atty.-Gen. (1902) 166, in connection with the question of annual tax levy to pay interest on bonded indebtedness, under special village charter. Subdivision 3 of the present section was cited in Op. Atty.-Gen. (1909) 648, in the discussion of the question of raising money to improve a village street in connection with the construction of a state and county highway. See infra, § 128 note. Subdivision 2 of the present section was cited in 9 St. Dept. Rep. 536, in connection with the question of emergency expenditures by the village board of health. See infra, § 128 note.

§ 111. Special assessment and levy. If the board of trustees is authorized by a special election to levy a special tax, the clerk shall forthwith prepare a copy of the annual assessment-roll, and the same shall be revised and corrected by the board of trustees as shall be just, for the purposes of the assessment of such tax upon the taxable property and persons of the village, and as so corrected and revised shall be filed with the clerk on or before the second Tuesday after such special election. Thereupon the like proceedings shall be taken, as nearly as may be, for completing such assessment-roll, hearing and determining complaints in relation thereto, which must be on a notice of not less than five nor more than ten days, filing the roll when completed, giving notice thereof, and levying the special tax so authorized, as in the case of the annual assessment-roll and the levy of the annual tax.

This section was derived from Village Law, L. 1897, ch. 414, § 111.

§ 112. Lien of tax. An annual or special tax is a lien prior and superior to every other lien or claim, except the lien of an existing tax or local assessment, on real property upon which it is levied from the date of the delivery to the collector of the warrant for the collection thereof, until paid or otherwise satisfied or discharged.

This section was derived from Village Law, L. 1897, ch. 414, § 112.

Cited.— This section was cited in Trumbull v. Palmer, (1905) 104 App. Div. 51, 93 N. Y. S. 349, modifying judgment 42 Misc. 628, 87 N. Y. S. 614, in connection with the question of the right to maintain an action to have an assessment declared void as a cloud upon title. The present section was cited in Op. Atty.-Gen. (1911) 457, in connection with the question of the enforcement of the statutory lien for unpaid water rents. See infra, § 229 note.

§ 113. Lien of assessment for local improvement. An assessment for paving, sewers, fire protection, constructing or repairing sidewalks, sprinkling streets, trimming trees, or keeping sidewalks or streets cleared of weeds, ice, snow or other accumulations, is a lien prior and superior to every other lien or claim, except the lien of an existing tax or local assessment, upon the real property improved or benefited from the date of the final determination of the amount thereof until it is paid or otherwise satisfied or discharged. No real property is exempt from assessment for a purpose specified in this section, except as provided in

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section one hundred and seventy-one of the membership corporations law.

This section was derived from Village Law, L. 1897, ch. 414, § 113, as amended by L. 1898, ch. 539, § 1.

Property exempt from taxation: see TAX LAW, § 4.

Liability of cemetery association for local improvements.— It was held in Gouverneur v. Gouverneur Cemetery Ass'n, (1909) 136 App. Div. 37, 120 N. Y. S. 221, reversing 62 Misc. 534, 116 N. Y. S. 1107, that whether or not the present section effected a repeal of chapter 310 of the Laws of 1879, providing that land actually used for cemetery purposes should not be sold under execution or for taxes or assessments, an action would lie against a cemetery association to recover the cost of building a sidewalk in front of its premises, since the judgment might be satisfied out of personal property belonging to the association or out of lands not actually used for cemetery purposes, and might also become a lien upon lands actually used for cemetery purposes if at any time they ceased to be so used.

Cited.—This section was cited in Dubois v. Parcells, (1909) 118 N. Y. S. 615, in connection with the question of personal liability of assessors for errors in making up assessment roll. See supra, § 104 note.

§ 114. Warrant to collector. Upon the completion of a tax levy the clerk shall deliver to the collector one of the duplicate rolls, with a warrant thereto annexed signed by the president and attested by the clerk, under the corporate seal of the village, containing a summary statement of the purposes for which the taxes are levied, the amount thereof for each purpose, and the total amount for all purposes, and commanding the collector to collect the taxes therein levied with his fees, and to return said warrant and roll to the clerk within sixty days after the date of the warrant, unless the time shall be extended. The collector shall give a receipt to the clerk for the warrant and assessment roll delivered to him. The board of trustees may extend the time for the return of the warrant thirty days beyond the first sixty, and such extension shall not affect the validity of the bond given by the collector and his sureties.

This section was derived from Village Law, L. 1897, ch. 414, § 114.

Validity of warrant where amount of tax is written in by village clerk.— A warrant is defective which is based upon a tax roll in which the amount of the tax against each person has not been carried out by the board of trustees but has been written in by the village clerk, computing by the tax rate as fixed by the trustees. Upper Nyack v. Jewett, (1903) 86 App. Div. 254, 83 N. Y. S. 838, affirmed (1905) 181 N. Y. 514, 73 N. E. 1133.

Illegality of tax levy as excuse for failure to make return of warrant.— The fact that a tax has been illegally levied affords no justification to the collector in refusing to make his return of the warrant in the manner required by the statute. Olean v. King, (1889) 116 N. Y. 355, 22 N. E. 559.

Duty of collector as to water and light rents.— It is no part of the statutory duty of the collector of taxes to collect village water and light rents, or anything other than taxes as per warrant directed to him by the board of trustees. Op. Atty.-Gen. (1902) 210.

§ 115. Collection of taxes by collector; notice to be given to nonresidents. Upon receiving the assessment-roll and warrant the collector shall cause a notice to be published at least once in the

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official paper, if any, and also in each other newspaper published in the village, and posted conspicuously in five public places in the village, stating that on six days specified therein, not less than nine nor more than twenty days after the publication and posting thereof, he will attend at a convenient place in the village, specified in the notice, for the purpose of receiving taxes. A person or corporation who is the owner of, or liable to assessment for, an interest in real property situated and liable to assessment and taxation in a village in which he or it is not actually a resident, may file with the village clerk of such village a notice stating his name, residence and post-office address, or in case of a corporation, its principal office, and a description of the premises sufficient to identify the same, and such notice shall be valid and continue in effect until cancelled by such person or corporation. The village clerk shall, within five days after the delivery of the warrants for the collection of taxes in such village, furnish to the collector of such village, and such collector shall within such time apply for a transcript of all notices so filed and each such collector shall within five days after the receipt of such transcripts mail to each person or corporation filing such notice, at the post-office address stated therein, a statement of the amount of taxes due on such property and the times and places at which the same may be paid. In case such statement shall not be furnished as herein provided, such person or corporation shall not be liable for fees for collection in excess of one per centum. Upon the filing of such notice, the village clerk shall be entitled to receive a fee of one dollar from the person or corporation offering such notice, which shall be in full for all services rendered therein. Any person or corporation paying taxes within twenty days from the date of the notice, shall be charged with one per centum thereon, and thereafter with five per centum, for the fees of the collector, except as herein provided; provided that in a village in which the compensation of the collector has been fixed by the board of trustees as provided in this act, the taxes may be paid within the said twenty days without additional charge and all taxes in such village remaining unpaid after the expiration of said twenty days shall be increased five per centum except as herein provided. After the expiration of such twenty days the collector shall proceed to collect the taxes remaining unpaid, and for that purpose he possesses all the powers of a town collector. The laws relating to town collectors shall also, so far as consistent with this chapter, apply to the collection of village taxes.

This section was derived from Village Law, L. 1897, ch. 414, § 115. It was amended by L. 1913, ch. 61, § 2. This amendment added to the sixth sentence the words which follow the semi-colon therein. It was further amended by L. 1915, ch. 253, § 1. This amendment materially changed the part of section consisting of the second, third, fourth, fifth and sixth sentences which formerly read as follows: "At least seven days before the first

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date fixed in such notice, the collector shall serve a copy thereof upon each corporation named in or subject to taxation upon the assessment-roll, and whose principal office is not in the village, by delivering such copy to a person designated by the corporation for that purpose by a written designation filed with the village clerk, or to any person in the village acting as the agent or representative in any capacity of such corporation. If there is no such designated person or agent in the village, service of such notice upon the corporation shall not be required. Any person or corporation paying taxes within twenty days from the date of the notice, shall be charged with one per centum thereon, and thereafter with five per centum, for the fees of the collector; provided that in a village in which the compensation of the collector has been fixed by the board of trustees as provided in this act, the taxes may be paid within the said twenty days without additional charge and all taxes in such village remaining unpaid after the expiration of said twenty days shall be increased five per centum. If a notice is not served upon a corporation as herein required, the collector shall only be entitled to one per centum as his fees upon the taxes assessed against it."

Collector's undertaking: see TOWN LAW, § 114.

Filing and lien of collector's undertaking: see TOWN LAW, § 115.

Term of collectors: see TOWN LAW, § 82.

Judgment on failure to return amount of warrant.— The village collector and the sureties upon his bond are chargeable with the tax which by the tax roll and warrant he is required to collect, and where, in an action on the bond, it appears that the amount paid over by him is short of that called for by the warrant and no account is rendered for the shortage, judgment is properly rendered against him and the sureties for the amount of the deficit. Olean v. King, (1889) 116 N. Y. 355, 22 N. E. 559.

§ 116. Return of collector; payment of taxes to treasurer. The collector shall pay all taxes received by him, as soon as practicable after receipt thereof, to the treasurer, and, upon the expiration of the time fixed therefor, shall deliver the roll and warrant to the clerk and make and file with him a return, in accordance with the directions of the warrant, showing the total amount of tax paid and each tax unpaid, with the receipt of the village treasurer for all taxes paid to him. The clerk shall thereupon deliver to the treasurer a statement showing the unpaid taxes returned by the collector. All taxes so returned unpaid shall be increased five per centum, and, if remaining unpaid for thirty days after such return, shall bear interest at the rate of ten per centum per annum, from the time of their return as unpaid by the collector to the time of their subsequent payment; and such tax and increase may be paid to the treasurer at any time after such return and before a sale for such unpaid tax of any real property upon which the same may be assessed; but if paid after a notice of sale has been given as provided in this article, the expense of such notice shall be added to the amount of the tax. The provisions of this section, so far as practicable, apply to a village in which the taxes are collected by the treasurer.

This section was derived from Village Law, L. 1897, ch. 414, § 116.

§ 117. Collection of taxes by treasurer. In a village which has no collector, the tax-roll and warrant shall be delivered to the treasurer of the village, and the provisions of this article relating

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to the delivery of a tax-roll and warrant, the extension of the time for the collection of taxes, and the return of such tax-roll and warrant, apply to the roll and warrant so delivered to a treasurer, so far as practicable. Upon the delivery of the roll and warrant to the treasurer, he shall publish in each newspaper actually printed in the village, once in each week for four consecutive weeks, and post in five public places in the village, a notice that such tax-roll and warrant have been left with him for the collection of the taxes therein levied, and designating one or more convenient places in the village where he will receive taxes for thirty days after the first publication and posting of said notice, from nine o'clock in the morning until four o'clock in the afternoon, and that for said thirty days taxes may be paid to him without additional charge; and that all such taxes remaining unpaid after the expiration of said thirty days will thereafter bear interest at the rate of twelve per centum per annum, until the return of the tax-roll and warrant. The treasurer shall attend at the time and place specified in said notice, and may receive such taxes. After the expiration of said thirty days the treasurer shall proceed to collect the taxes remaining unpaid, with interest as herein provided, but without any other fee or charge, and for that purpose be possessed of all the powers of a town collector.

This section was derived from Village Law, L. 1897, ch. 414, § 117.

§ 118. Return and assessment-roll as evidence. The return of unpaid taxes by the collector, or treasurer, or a copy thereof certified by the clerk under the corporate seal, shall be presumptive evidence of the facts stated therein. An assessment-roll filed with the clerk, or a copy of the same, or any part thereof, certified by him under the corporate seal, shall be presumptive evidence of the contents thereof, of the regularity of the assessment, and of the right to levy such tax.

This section was derived from Village Law, L. 1897, ch. 414, § 118.

Application of section.— The provision of the present section making the assessment roll, when properly authenticated, presumptive evidence of the contents thereof, etc., applies only where no illegality appears on the face of the assessment roll. Where illegality does so appear the assessment roll itself repels the presumption. Allter v. St. Johnsville, (1909) 130 App. Div. 297, 114 N. Y. S. 355, holding also that the provision of the statute does not apply to matters improperly interpolated in the assessment roll and which are entirely irrelevant thereto. See in this connection Trumbull v. Palmer, (1905) 104 App. Div. 51, 93 N. Y. S. 349, modifying judgment 42 Misc. 628, 87 N. Y. S. 614.

§ 119. When real property to be sold for unpaid tax. If a tax assessed upon real property on an annual or special assessment-roll be returned by the collector or treasurer as unpaid, the board of trustees may direct the treasurer to sell an interest in such property for the unpaid tax in the manner herein prescribed. If such

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sale be directed, the clerk shall deliver to the treasurer a certified copy of the assessment upon such property, and all entries relating thereto contained in the assessment-roll. Upon receiving such statement, the treasurer shall proceed to sell at public auction an estate in such real property for the shortest period, not exceeding fifty years, for which any person will take such property and pay the tax and the percentage and interest then due, together with the expenses of the sale, which shall include giving the notice of sale, and one dollar for the services of the treasurer.

This section was derived from Village Law, L. 1897, ch. 414, § 119.

Cited.— This section was cited in Op. Atty.-Gen. (1911) 457, in connection with the question of the enforcement of the statutory lien for unpaid water rents. See infra, § 229 note.

§ 120. Notice of sale. Notice of the sale shall be published in the official newspaper once in each week for at least four consecutive weeks, and posted in at least five conspicuous places in the village, and a copy thereof served on the owners of such real property at least three weeks before the sale. The notice of sale shall contain a brief description of the property and a brief statement of the facts authorizing the sale, and the time and place thereof.

This section was derived from Village Law, L. 1897, ch. 414, § 120, as amended by L. 1904, ch. 34, § 1.

§ 121. Certificate of sale. All such sales shall be for cash, and upon payment by the purchaser, the village treasurer shall deliver to him a certificate of the sale, signed and acknowledged in the same manner as a deed to be recorded, stating the amount paid by the purchaser, the date of sale and payment, and a description of the real property sold. The certificate of sale may be recorded in the county clerk's office of each county in which any part of the property is situated, in the same manner and with the same effect as a deed, and if so recorded within two years after the tax became a lien on the property, the recording of such certificate shall have the same effect as the recording of a deed, to give the certificate priority over every interest therein or lien thereon acquired subsequent to the lien of the tax; but, unless such certificate is recorded within such time, it shall be void as to such other interest or lien.

This section was derived from Village Law, L. 1897, ch. 414, § 121.

Recording of conveyance: see REAL PROPERTY LAW, § 291.

Who may take acknowledgments within state: see REAL PROPERTY LAW, § 298; Code Civ. Pro., § 2481.

Suit to cancel certificate as cloud upon title.— It has been held that a suit to cancel a certificate of sale as a cloud upon title will not lie where the tax is concededly invalid, because the assessment roll and notice of sale do not describe the premises with reasonable certainty, even though the certificate correctly describes the property. Hicinbothem v. North Pelham, (1911) 144 App. Div. 698, 129 N. Y. S. 715.

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§ 122. Purchaser entitled to possession. Upon the receipt and recording of such certificate, the purchaser or other owner of the certificate shall be entitled to immediate possession and enjoyment of such real property as against all persons having any title to, interest in, or lien upon the property at the time the tax became a lien thereon, and against all persons deriving any title to, interest in or lien upon, such property while the tax was a lien thereon, and to retain possession thereof during the existence of the estate purchased, unless such real property is redeemed from such sale.

This section was derived from Village Law, L. 1897, ch. 414, § 122.

Redemption from sale by owner: see infra, § 125.

Cited.— This section was cited in Hicinbothem v. North Pelham, (1911) 144 App. Div. 698, 129 N. Y. S. 715, in connection with the question of right to maintain action to cancel certificate of sale as cloud upon title. See supra, § 121 note.

§ 123. Enforcement of right to possession. The purchaser or other owner of the certificate may enforce his right to possession by summary proceedings, in the same manner as a landlord against a tenant holding over after expiration of term. The purchaser or other owner of the certificate may, before the expiration of the estate purchased, remove all buildings and fixtures which he has erected or placed thereon during its existence, which can be removed without permanent injury to the premises.

This section was derived from Village Law, L. 1897, ch. 414, § 123.

Summary proceedings to recover possession of real property: see Code Civ. Pro., § 2231 et seq.

Recovery of amount paid to holder of certificate based upon void tax.— It has been held that where property is sold to satisfy a void tax and the purchaser serves a notice to quit preparatory to instituting summary proceedings to remove the owner, a payment made by the owner of the amount claimed under the certificate of sale is made under coercion, and may be recovered back. Rupert v. North Pelham, (1910) 139 App. Div. 302, 123 N. Y. S. 944.

Cited.— This section was cited in Hicinbothem v. North Pelham, (1911) 144 App. Div. 698, 129 N. Y. S. 715, in connection with the question of right to maintain action to cancel certificate of sale as cloud upon title. See supra, § 121 note.

§ 124. Village may bid in property; rights of village. If there be no other bidder, the treasurer shall bid in the property for the village for the term of fifty years, and a certificate thereof shall be issued accordingly. Thereupon the village has all the rights of a purchaser for such term. Immediately upon the purchase of such property by the village, the president shall take possession thereof and hold, manage, lease or otherwise control the same. He may, in the name of the village, institute and maintain summary proceedings to obtain possession of such property in the same manner as upon the sale of real property upon execution. The treasurer shall open an account with such property, and shall charge to the same the amount of taxes, fees, interest and expenses of the sale, and shall also add all sums subsequently

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levied upon the property by tax or local assessment and remaining unpaid. The president shall pay to the treasurer during each fiscal year the net amount received from such property, which amount shall be credited in the account. Upon payment to the treasurer of the amount of the taxes or assessments charged against such property, together with the interest at the rate of ten per centum per annum from the time of the sale or the return of a subsequent unpaid tax or assessment, after deducting any credits appearing in the account, the president shall on demand execute and deliver to the person making such payment an assignment of the certificate of sale, or a satisfaction thereof, as may be required. Whenever the amount received from the use of such property equals the taxes, assessments, expenses and interest then due, the right of the village in such property shall cease and determine, and the president shall thereupon execute and deliver to the owner of the property a release and satisfaction of the interest of the village therein. If upon the execution of an assignment of the certificate, or of a release or satisfaction, a surplus derived from such property remains in the treasury, it shall be paid upon the order of the board of trustees to the person entitled thereto, on demand.

This section was derived from Village Law, L. 1897, ch. 414, § 124.

Summary proceedings to recover possession of real property: see Code Civ. Pro., § 2231 et seq.

§ 125. Redemption from sale by owner. A person who at the time of the sale was the owner of the property, or of a vested interest therein, or a lessee thereof, or his assigns, may redeem from the sale, either by paying to the owner of the certificate of sale other than the village, or by depositing with the treasurer for his benefit, the amount paid by the purchaser on such sale, with interest thereon at the rate of ten per centum per annum from the time of the sale to the time of deposit, and the fees lawfully paid to each county clerk for recording the certificate or any assignment thereof in any county in which the property or any part thereof is situated. If such payment be made to the owner of the certificate he shall thereupon execute and deliver to such person making the payment a written cancellation or receipt of the certificate of sale duly acknowledged in the same manner as a deed to be recorded, and specifying the date of the sale, the amount paid thereon, the purchaser thereat, and the property sold. If such payment be made to the treasurer, he shall deliver to the person making it a written receipt acknowledged in like manner and containing the like specifications. The recording of such cancellation or receipt in each clerk's office of the county in which any part of such property is situated shall effect a cancellation of such certificate of sale.

This section was derived from Village Law, L. 1897, ch. 414, § 125.

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§ 126. Actions to recover unpaid taxes. After the lapse of thirty days from the return of the collector, an action may be maintained, as upon contract, by the village, to recover the amount of an unpaid tax, together with five per centum thereof, and interest from the time of such return at the rate of ten per centum per annum. A judgment in such action for any amount, when docketed in the office of the county clerk, shall be a lien upon the real property of the defendant,[1] having the same priority, as such lien, as the taxes upon which there was a recovery recovered in such action, and an execution upon the judgment may be issued and enforced against the real property of the defendant regardless of the amount of such judgment. Supplementary proceedings may also be taken for such tax in accordance with the provisions of the tax law,[1] regardless of the amount of such judgment.

This section was derived from Village Law, L. 1897, ch. 414, § 126. It was amended by L. 1917, ch. 412, § 1. The amendment is shown in the footnote.

Supplementary proceedings to collect tax: see TAX LAW, § 299.

Counterclaim to action to recover taxes.— The rule that taxes are not subject to counterclaim or set-off has not been changed by the provision of the present section that after the lapse of thirty days from the return of the collector an action may be maintained, *as upon contract*, by the village to recover the amount of an unpaid tax. Charlotte v. Keon, (1913) 207 N. Y. 346, 100 N. E. 1116, 46 L. R. A. (N. S.) 135, reversing 143 App. Div. 952, 128 N. Y. S. 80.

§ 127. Investment of sinking funds. If at any time the receipts of the water, [1a]light [2]or other department, [3]whether accruing from earnings of the particular department, or by reason of moneys appropriated for the use of such department, exceed the amount needed for current expenses, and the payment of principal or interest due or to become due during the next fiscal year, the surplus may be transferred to a fund to be known as the sinking fund of the department, and to be used in the payment of outstanding obligations, or for future expenses of the [4]particular department, [5]for which such fund is created, and in case of the water or light department, may be used for the future expenses of that department if the rents or other income be insufficient for that purpose.

[6]Any village sinking fund may be invested in: 1. The bonds of the United States, the state of New York, or any city of this state, or the bonds, certificates, or other obligations issued by the village for the payment of [7]any lawful indebtedness, which

[1] Remainder of sentence new.

[1a] "or" omitted.

[2] "or other" new.

[3] "whether accruing from . . . for the use of such department" new.

[4] "particular" new.

[5] Remainder of sentence new, and in place of "if the rents or other income be insufficient for that purpose."

[6] "Any" in place of "a".

[7] "any lawful" in place of "such."

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may be purchased at any time from such sinking fund at prices not exceeding the par value, and when so purchased the same shall be immediately cancelled; or

2. Mortgages on improved land owned by the borrower in a county in which such village or a part thereof is located; but before such a mortgage is accepted the board of trustees must be satisfied that the borrower has a title in fee to such lands, and that the same are free and clear of all incumbrances and are worth twice the amount of the sum loaned, exclusive of buildings.

This section was derived from Village Law, L. 1897, ch. 414, § 127. It was amended by L. 1915, ch. 195, § 1. The amendments are shown in the footnotes.

Application of surplus moneys of a department: see supra, § 101-a.

"Free and clear of all incumbrances": see REAL PROPERTY LAW, § 253, subd. 3.

Issuance of municipal bonds and maximum rate of interest thereon: see GENERAL MUNICIPAL LAW, §§ 9, 21.

Cited.— This section was cited in Matter of Kenmore, (1908) 59 Misc. 388, 110 N. Y. S. 1008, in connection with the question of the disposition of proceeds of bonds improperly issued. See infra, § 128 note. The present section was cited in 9 St. Dept. Rep. 504, in connection with the discussion of the powers of a municipal commission appointed under authority of section 64, supra.

§ 128. Borrowing money generally. If authorized by a proposition adopted at an election, money may be borrowed by a village upon its bonds or other obligations, payable in future fiscal years. Such proposition shall specify the amount to be borrowed, the purpose to which the same shall be applied, and shall state, within the limitations prescribed by section one hundred and twenty-nine of this chapter, the time or times when such bonds or obligations shall become due; which proposition shall be printed in full upon the ballot or ballot label, to be voted at such election. No money shall be so borrowed except for the purpose of purchasing, constructing and maintaining the following village improvements:

Amended by L. 1911, ch. 738, § 1. This amendment added "a proposition adopted at" at the beginning of the section; added the second sentence, and added "No money shall be so borrowed except" to the beginning of the last sentence.

1. A village or town hall.

2. Fire houses, fire engines, fire alarm system and all other apparatus for use in extinguishing fires.

3. Laying out, widening, altering, grading or paving streets, and for the purchase of a steam roller, stone crusher and engine, and other road making machinery.

Amended by L. 1911, ch. 57, § 1. This amendment changed the provision "for the purchase of a steam roller" so as to read "for the purpose of a steam roller". It was amended by L. 1911, ch. 738, § 1, which restored the original reading.

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4. Sidewalks.
5. Bridges.
6. Water works.
7. Lighting system.
8. Sewerage.
9. Parks or a site for a free public library.
10. Cemeteries.
11. Drains and culverts, the regulation of water courses, ponds and watering places, and the protection of the property within the village from floods, freshets and high water.
12. Public docks or bulkheads.
13. For paying the additional expense of a state or county highway through the village when constructed or improved upon modified plans of the state commission of highways, as provided by the highway law.

New. Added by L. 1910, ch. 4, § 2.

14. Plants for the disposal of swill, garbage, ashes and rubbish, or any of them, or vehicles or other appurtenances to be used in connection therewith.

New. Added by L. 1917, ch. 27, § 2.

And also for the purpose of paying certificates of indebtedness lawfully issued by the trustees under the provisions of section one hundred and fifty-eight of this chapter. Money may be borrowed in anticipation of taxes [1] levied or to be levied for the current fiscal year, [2]but not in excess of the amount previously estimated by the board of trustees, as necessary to be raised during said fiscal year, [3] nor in excess of the amount of taxes of said fiscal year remaining unpaid at the time such money is borrowed, and [4] the money so borrowed must be payable within such year. No contract shall be made involving an expenditure by the village unless the money therefor [5]has previously been estimated by the board of trustees as necessary to be raised during the then fiscal year, or [6]unless a proposition has been adopted authorizing the board of trustees to raise such money. If a final judgment against a village exceeds one thousand dollars, money may be borrowed for the payment thereof, on the adoption of a proposition therefor at a village election, and bonds or other obligations of the village may be issued

[1] "levied or to be levied" new.
[2] "prior to the annual levy thereof" omitted.
[3] "nor in excess . . . money is borrowed" new.
[4] "the money so borrowed" new; "it" omitted.
[5] "has previously been estimated . . . fiscal year" new; "is on hand" omitted.
[6] "unless" new.

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for that purpose, payable in instalments or otherwise as prescribed in section one hundred and twenty-nine of this chapter.

Amended by L. 1911, ch. 57, § 1. The amendments are shown in the footnotes.

This section was derived from Village Law, L. 1897, ch. 414, § 128. Amendments to subdivisions are noted following the subdivision affected.

Creation of funded debt: see GENERAL MUNICIPAL LAW, §§ 6, 8.

Investigation of expenditures of villages: see GENERAL MUNICIPAL LAW, § 4.

Limitation of indebtedness: see CONSTITUTION, art. VIII, § 10; CONSTITUTION, art. XII, § 1.

Payment of judgments against municipal corporations: see GENERAL MUNICIPAL LAW, §§ 70, 82.

Temporary loans: see GENERAL MUNICIPAL LAW, § 5.

Villages not to give or loan money or credit: see CONSTITUTION, art. VIII, § 10.

When women entitled to vote: see supra, § 41, subd. 2.

Proceedings for submission of bond issue proposition.— The proceedings for the submission of a bond issue proposition to the village taxpayers should be had in accordance with the provisions of sections 52, 56 and 57 (formerly 55, 59 and 60) of the Village Law. Canandaigua v. Hayes, (1904) 90 App. Div. 336, 85 N. Y. S. 488.

Language sufficient to authorize issue of bonds.— A resolution duly adopted by the taxpayers of a village that there "shall be raised upon the village" the necessary amount for the purchase of a waterworks system, is broad enough, under the present section, to authorize the issue of bonds on the credit of the municipality for that purpose. New York, etc., Cement Co. v. Davis, (1903) 173 N. Y. 235, 66 N. E. 9, affirming 62 App. Div. 577, 71 N. Y. S. 185.

Validity of contract with public accountant.— A contract made by the officials of a village with a certified public accountant to make an examination of past taxes and assessments and various compilations therefrom and to devise a new and efficient system of bookkeeping and accounting and instruct the village officers therein, is void, where at the time of making the contract there are no funds on hand and no proposition has been submitted to raise the money for the purpose. Wakefield v. Brophy, (1910) 67 Misc. 298, 122 N. Y. S. 632; Wakefield v. Perkins, (1910) 65 Misc. 619, 120 N. Y. S. 635.

Contract for materials without sufficient funds.— Where a contract is made by a village for materials for local improvements, but only a portion of the money necessary to pay therefor is on hand, the contract cannot be enforced in its entirety, but a recovery may be had thereon to the extent of the moneys the village had on hand available for the payment of the materials. Lines v. Otego, (1904) 91 N. Y. S. 785.

Emergency expenditures of board of health.— Notwithstanding the debt limitations in the present section, expenses necessarily incurred by a board of health in suppressing an epidemic are legal obligations of the village, and may be paid from any surplus existing in village funds, under section 101-a, supra; if there be no surplus available, an amount necessary to pay the same may be included in and raised under authority of subdivision 2 of section 110, supra. 9 St. Dept. Rep. 536.

Improvement of street as part of highway.— Where a village street is to be improved in connection with the construction of a state and county highway the money therefor is to be raised either by tax under section 110 or from the issue and sale of bonds authorized under the present section. Op. Atty.-Gen. (1909) 648. In this connection see HIGHWAY LAW, § 137.

Disposition of proceeds of bonds improperly issued.—Where village improvements are voted with the provision that ninety per cent of their cost shall be borne by abutting owners and ten per cent by the village at large, bonds for the whole cost are not thereby authorized; but, where legislative authority is subsequently given for an issue of bonds for the amount of certain of the improvements and bonds for the full amount of the remainder are expressly authorized by a subsequent vote of the electors, they constitute

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valid obligations of the municipality. In such a case, the use of moneys arising from assessments laid upon the property of the abutting owners for ninety per cent of the improvements, to form a so-called sinking fund for the payment of the bonds when they mature, and loans to the municipality from such fund upon certificates of indebtedness for current expenditures, are improper; all such loans should be repaid by the village with all convenient speed and the fund should be deposited with some duly authorized depository and paid out only for retiring the bonds. Matter of Kenmore, (1908) 59 Misc. 388, 110 N. Y. S. 1008.

Cited.— The present section was cited in Gould v. Seneca Falls, (1910) 137 App. Div. 417, 121 N. Y. S. 723, affirming 118 N. Y. S. 648, affirmed (1910) 200 N. Y. 523, 93 N. E. 1121, in connection with the question of the right of women to vote on proposition of village bond issue. See supra, § 41 note. This section was cited in Op. Atty.-Gen. (1909) 903, in connection with the question of the personal liability of the members of a village board who create a debt against the village without authorization by village vote. See infra, § 333 note. The present section was also cited in Hempstead v. Seymour, (1901) 34 Misc. 92, 69 N. Y. S. 462, in connection with the question of separate submission of propositions for funded indebtedness. See GENERAL MUNICIPAL LAW, § 6 note.

§ 129. Bonds or other obligations. Bonds or other obligations of the village shall be signed by the president and attested by the clerk under the corporate seal. They shall become due within thirty years from the date of issue, and, unless the whole amount of the indebtedness represented thereby is to be paid within five years from their date, they shall be so issued as to provide for the payment of the indebtedness in [1]equal annual instalments, [2]the first of which shall be payable not more than five years from their date. The amount of each of such annual instalments shall be fixed and determined by resolution adopted by the board of trustees of such village and shall be stated in the public notice [3]of the election required to be given. [4]Such bonds shall bear interest at a rate not exceeding five per centum per annum, and shall be negotiated for not less than their par value. They shall be sold on sealed proposals or at public auction upon notice published in the official paper, if any, and also in any other newspaper actually printed in the village, and in such other newspapers as the board of trustees may determine, and posted in three public places in the village, at least ten days before the sale, to the person who will take them at the highest price. They shall be consecutively numbered from one to the highest number issued, and the clerk shall keep a record of the number of each bond or obligation; its date, amount, rate of interest, when and where payable, and the name

1 "equal" new.

2 Remainder of sentence new.

3 "of the election" new.

4 Sentence omitted which read "Such instalments shall be of such amount in each year as the board of trustees may determine and such board by such resolution shall distribute the total amount necessary to be raised in such proportion and amount in each year as they deem best; but the amount of such instalments as distributed by such resolution shall equal the total amount of such indebtedness within a period of thirty years from the date of issue of such bonds."

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of the purchaser thereof or the person to whom they are issued, or in whose name they may be registered.

This section was derived from Village Law, L. 1897, ch. 414, § 129. It was amended by L. 1914, ch. 54, § 1. This amendment changed the provision of the former section which required the payment of indebtedness in equal annual instalments by striking out the word "equal", and omitted a provision that the first instalment should be payable not more than five years from the date of the obligation. This amendment also added provisions relating to the fixing, by the trustees, of the amount of the instalments and limiting the period of the instalments to thirty years. It was further amended by L. 1915, ch. 48, § 1. The amendments are shown in the footnotes.

Section 2 of the amendatory act of 1915 provided for the validation of issues of obligations notwithstanding the amendment to section 129 by L. 1914, ch. 54.

Defects not invalidating municipal bonds: see GENERAL MUNICIPAL LAW, § 12.

Investigation of expenses and expenditures of villages: see GENERAL MUNICIPAL LAW, §§ 4, 51.

Issuance, registry and payment of municipal bonds: see GENERAL MUNICIPAL LAW, §§ 7, 9, 10.

Legalizing municipal bonds or proceedings for issuance: see GENERAL MUNICIPAL LAW, § 22 et seq.

Maximum rate of interest on municipal bonds: see GENERAL MUNICIPAL LAW, § 21.

Reissue of lost or destroyed bonds: see GENERAL MUNICIPAL LAW, § 20.

Liability of village on bonds stolen before delivery.— Village bonds are not legally issued until they are delivered as evidence of a subsisting debt; where they are stolen prior to their delivery and placed upon the market feloniously the village is not liable thereon even when they have passed into the hands of an innocent purchaser for value. Germania Sav. Bank v. Suspension Bridge, (1893) 73 Hun 590, 26 N. Y. S. 98, appeal dismissed (1899) 159 N. Y. 362, 54 N. E. 33.

Cited.— This section was cited in Bronxville v. Seymour, (1907) 122 App. Div. 377, 106 N. Y. S. 834, in connection with the question of certainty and definiteness in proposition for funded indebtedness. See GENERAL MUNICIPAL LAW, § 6 note. The present section was cited in Canandaigua v. Hayes, (1904) 90 App. Div. 336, 85 N. Y. S. 488, in connection with the question of the necessity of statement as to maturity of bonds and amount of annual tax levy to meet them. See GENERAL MUNICIPAL LAW, § 6 note. This section was cited in Matter of Kenmore, (1908) 59 Misc. 388, 110 N. Y. S. 1008, in connection with the question of the disposition of proceeds of bonds improperly issued. See supra, § 128 note.

§ 130. Limitation of indebtedness. A village shall not incur indebtedness if thereby its total contract indebtedness, exclusive of liabilities for which taxes have already been levied and obligations issued to provide for the supply of water, shall exceed ten per centum of the assessed valuation of the real property of such village, subject to taxation, as it appeared on the last preceding village assessment-roll.

This section was derived from Village Law, L. 1897, ch. 414, § 130.

Investigation of expenditures of villages: see GENERAL MUNICIPAL LAW, §§ 4, 51.

Temporary loans and funded debt: see GENERAL MUNICIPAL LAW, §§ 5, 6, 8.

Right of taxpayer to restrain illegal bond issue.— An issue of bonds by a village for an amount in excess of that limited in the present section, although authorized by a vote of the taxpayers, is void, and may be restrained in the courts by any taxpayer of the village. Op. Atty.-Gen. (1901) 198.

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As to taxpayers' action, see GENERAL MUNICIPAL LAW, § 51, and Code Civil Procedure, § 1925.

Power of villages as to water supply.— A village may incur any amount of indebtedness to provide for the supply of water, and regardless of such indebtedness it may still incur indebtedness for other purposes not exceeding the ten per centum of the assessed valuation of the real property of the village subject to taxation, as it appears on the last preceding village assessment roll. Op. Atty.-Gen. (1905) 527. See also Lines v. Otego, (1904) 91 N. Y. S. 785.

§ 131. Second election upon proposition to raise money. If the vote at an election upon a proposition to purchase property or to raise a tax or to incur a debt shall be against such proposition, no proposition embracing the same subject shall be again submitted before the *elapse of ninety days thereafter.

This section was derived from Village Law, L. 1897, ch. 414, § 131. It was amended by L. 1910, ch. 598, § 1. The amendment substituted "elapse of ninety days thereafter" in place of "next annual election thereafter."

Tie vote on proposition.— A tie vote upon a proposition coming within the present section is equivalent to a defeat of it, and another election thereon cannot be held until the lapse of ninety days thereafter. Op. Atty.-Gen. (1912) 369.

Application of section when conflicting with special charter provisions.— It has been held that where the provisions of the present section are inconsistent with those of a special village charter they do not apply. O'Connor v. Waterford, (1916) 171 App. Div. 425, 156 N. Y. S. 933.

Application of section to school district election after village election on library proposition.— The present section has no application in connection with a proposition to raise money for the use of a free public library where one vote is taken at a village election and a subsequent one at a school district meeting. Op. Atty.-Gen. (1911) 404.

§ 132. Exemption from taxation of firemen and fire companies. Upon the adoption of a proposition therefor, the members of any fire, hose, protective or hook and ladder company in any village may be exempted from taxation to the amount of five hundred dollars on any assessment for village purposes, in addition to the exemptions otherwise allowed by law, and the real and personal property of any such company may also be exempted from like village taxation.

This section was derived from Village Law, L. 1897, ch. 414, § 132.

Exemptions from taxation generally: see TAX LAW, § 4.

Fire corporations generally: see MEMBERSHIP CORPORATIONS LAW, § 100 et seq.

Certificate under section 209 as entitling fireman to exemption.—The issuance of a certificate of five years' service as a volunteer fireman, under section 209, infra, is not enough of itself to entitle the holder thereof to exemption from taxation under the present section. Such exemption can be had only in case of the adoption of a proposition therefor by the village. Op. Atty.-Gen. (1903) 237.

Affirmative vote as effective without yearly submission.—Where exemption is conferred upon members of a village fire department under the present section without any limitation as to time the exemption continues effective without yearly submission and until a similar proposition is submitted and defeated. Op. Atty.-Gen. (1902) 225.

* So in original.

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§ 133. Absolute sales for non-payment of taxes. If a tax or assessment on real property included in an annual or special assessment-roll under this chapter, or a tax or assessment which was a lien on real property, or unpaid when the village law took effect, remains unpaid, and the treasurer or collector has made return that he can not collect the same, the board of trustees may, by resolution, determine that such real property and the entire interest therein, instead of an interest for a term of years, be sold for the collection of such tax or assessment. Such sale shall be for cash, and the notice of sale shall be given in the manner provided by section one hundred and twenty of this chapter, except that the board of trustees may designate one or more newspapers in the village, or in case no newspaper is published in said village, then in an adjoining city or village, in which the notice shall be published. The foregoing provisions of this article in relation to the conduct of a sale and the rights and remedies in respect to the real property sold shall not be applicable, but the village treasurer and board of trustees shall possess all the powers and be subject to all the liabilities and duties of a county treasurer and board of supervisors, under articles six and seven of the tax law; and such articles shall, so far as practicable, apply to a sale authorized by this section.

This section was derived from Village Law, L. 1897, ch. 414, § 133, as added by L. 1899, ch. 446, § 1, and amended by L. 1904, ch. 101, § 1.

Cited.—This section was cited in Op. Atty.-Gen. (1911) 457, in connection with the question of the enforcement of a statutory lien for unpaid water rents. See infra, § 229 note.

§ 134. Action by holder *or certificate of sale. In each village in this state adjoining a city[1] situate within a county having a population of four hundred thousand or upwards, excluding New York and Kings counties, the number of such inhabitants[2] to be ascertained by reference to the latest state enumeration, the holder, including such village, of any certificate of sale [3]of land for the non-payment of taxes heretofore or hereafter executed by the village treasurer, may recover the amount paid, stated in said certificate, with all interest, additions and expenses allowed by law, and for that purpose may maintain an action in the supreme court or in the county court of the county in which such village is situate. Jurisdiction of such action is hereby conferred upon said county court.

New. Added by L. 1913, ch. 234, § 1. It was amended by L. 1914, ch. 310, § 1. The amendments are shown in the footnotes.

* So in the original.

1 "having a population of over three hundred thousand inhabitants" omitted.

2 "in each instance" omitted.

3 "of land for the non-payment of taxes" new.

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§ 135. Idem; parties to the action; pleadings. The action provided for in the last section may be commenced at any time after two years from the date that the tax or assessment on account of which the sale was had was payable and all the provisions of law and the rules of practice relating to actions for the foreclosure of mortgages shall apply to the action [1]hereby authorized so far as practicable, except as herein otherwise specially provided. It shall be sufficient for the plaintiff to set forth in his complaint in such action a copy of or the substance of his certificate of sale and the interest, additions and expense claimed by him, with a statement that the same have not been paid and that the plaintiff elects to recover as herein provided, also that the defendants have or claim to have or may have some interest in or lien upon the property affected by the action. The plaintiff in such action shall include and join therein and may likewise recover upon all prior and subsequent certificates of sale held by him, executed by the village treasurer, relating to the same real property in whole or in part. He may include and join in one action all such certificates of sale relating to two or more separate and [2]distinct parcels of real property belonging to the same person or persons, notwithstanding the fact that other defendants in said action may not be interested or have liens upon all of the parcels included and joined in said action, [3]but the holder of such certificate shall not be compelled or required to consolidate such certificates of sale in one action. He shall make parties to the action the owner or owners of and all other persons interested in the real property affected, or any part thereof, including the holders of all prior and subsequent certificates of sale as shown by the records in the village treasurer's office. He may make parties thereto any municipal corporation which claims an interest in or lien upon the premises described in the complaint or any part thereof, by reason of any tax or assessment levied by said municipal corporation or on account of any other claim which said municipal corporation may have or claim to have against said real property.

The defendants in said action who are the holders of certificates of sale, shall be paid from the proceeds of sale the several amounts paid for the real estate as mentioned and described in the certificates of sale held by them, with all interest, additions and expenses allowed by law, so far as the said proceeds shall suffice to pay the same, in the order of the lawful priority of the liens and the interests of the respective parties in and against the premises as the same may be determined in the action. It shall be sufficient for any such defendant to set forth in his answer the certificate of sale or the substance thereof, with the other allegations in effect as

[1] "hereby" in place of "thereby".
[2] "distinct" in place of "district".
[3] Remainder of sentence new.

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[1]herein provided, with regard to the complaint in the action. A defendant alleging irregularity or invalidity in any tax, assessment or sale shall particularly specify in his answer such irregularity or invalidity.

The court shall have full power to determine and enforce in all respects the rights, claims and demands of the several parties to said action, including the rights, claims and demands, of the defendants as between themselves, to direct a sale of such property and the distribution or other disposition of the proceeds of such sale. Any party to the action may become the purchaser on any such sale.

New. Added by L. 1913, ch. 234, § 1. It was amended by L. 1914, ch. 310, § 1. The amendments are shown in the footnotes.

Action to foreclose mortgage: see Code Civ. Pro., § 1626 et seq.

§ 136. Certificates of sale; validity. Every certificate of sale on which the holder shall elect to recover, as herein provided, shall presumptively be valid and shall be presumptive evidence that the sale was regular and valid and that all previous steps and proceedings required by law were duly had and taken. No such certificate of sale and no tax or assessment for the non-payment of which the same was executed shall be deemed invalid or impaired on account of any irregularity or illegality therein or in the proceedings relating thereto, [2]or by reason of any error or omission in the name of the owner or owners of the lands taxed, assessed or sold, or by reason of said lands having been assessed as resident lands or non-resident lands, or otherwise, unless it is shown that the person complaining thereof has suffered actual injury and damage therefrom and then only to the extent of such injury and damage, and no such tax, assessment or certificate of sale shall be deemed invalid or impaired on account of any error or omission in the description of the property assessed or sold if the description is sufficient to identify such property with reasonable certainty.

New. Added by L. 1913, ch. 234, § 1. It was amended by L. 1914, ch. 310, § 1. The amendment is shown in the footnote.

§ 137. Tax sales; conveyance. The remedy herein provided shall be in addition to all other remedies allowed by law, with regard to certificates of sale, and shall not be dependent upon them or any of them, and may be had whether notice to redeem has been given or not.

A conveyance made pursuant to a judgment in any such action brought as herein provided shall vest in the purchaser [3]in fee

1 "herein" in place of "therein".

2 "or by reason . . . or non-resident lands, or otherwise" new.

3 "in fee simple" new.

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simple all [4]the right, title, interest, claim, lien and equity of redemption in or against the premises sold of all the parties to the action and of all persons claiming under them or any or either of them, subsequent to the filing of the notice of the pendency of the action, or whose conveyance or encumbrance is subsequent or is subsequently recorded, except subsequent taxes and assessments and sales on account thereof and except taxes and assessments which were liens on the premises at the time of the filing of a notice of the pendency of the action, but for the non-payment of which no sale had been had prior thereto and any sales on account of such taxes, and [5]each and every one and all of such parties and persons shall be barred and forever foreclosed by the judgment in said action of all right, title, interest, lien and equity of redemption in and to the premises sold or any part thereof, except as aforesaid.

New. Added by L. 1913, ch. 234, § 1. It was amended by L. 1914, ch. 310, § 1. The amendments are shown in the footnotes.

§ 138. Proceedings generally; redemption. The judgment in said action shall designate the village treasurer of such village as the officer to make sale of real property in any action brought as herein provided and said village treasurer for conducting said sale shall receive the same fees [1]and be allowed the same disbursements as are allowed by law to a referee appointed by a judgment in an action to foreclose a mortgage upon real estate. Unless the judgment otherwise directs, the village treasurer making the sale must, out of the proceeds, first pay as a part of the expenses of the sale all taxes and assessments which are liens upon the property sold, but which have become such subsequent to the filing of notice of pendency of the action or for the non-payment of which no sale had been had prior thereto and redeem the property sold from any sales for unpaid taxes and assessments which were had subsequent to the filing of such notice of pendency and shall pay all unpaid taxes and assessments assessed against said property by any other municipal corporation and redeem such property from any sales for unpaid taxes and assessments made by any other municipal corporation. The plaintiff's cost and allowances, exclusive of disbursements, shall not exceed fifteen dollars if he recovers less than fifty dollars, or twenty-five dollars if he recovers more than fifty dollars and less than five hundred dollars, unless in such a case the court shall, in its discretion, otherwise direct. If the plaintiff recovers more than five hundred dollars, his costs shall be at the rate allowed by law in actions to foreclose mortgages

4 "the" new.
5 "each and every one and all" new.
1 "and be allowed the same disbursements" new.

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upon real estate. [2]Where the plaintiff shall have joined in the complaint certificates of sale relating to more than one lot or parcel of land, as provided by section one hundred thirty-five, he shall be entitled to tax and recover as costs, in addition to the rates hereinbefore fixed, the sum of five dollars for each such additional lot or parcel of land. [2]The plaintiff shall be entitled to tax and recover the same disbursements as are allowed a plaintiff in an action to foreclose a mortgage on real estate. [2]The costs and disbursements of said action shall be paid from the proceeds of the sale. [2]In the event that the action is compromised before judgment the plaintiff shall be entitled to recover all of his disbursements and one-half of the costs fixed by this section. The village treasurer may have made such tax and title searches of each parcel of land [3]included in any tax sale had by him or any tax sale certificate executed by him, as he deems best in the interest of the village. [2]Any person desiring to redeem any lot or parcel of land from any tax sale shall first pay to the said treasurer the expenses made or incurred by him on account of such search. Whenever the village is the owner and holder of tax liens against [4]or of certificates of sale of premises directed in or by a judgment in any such action to be sold, the village treasurer may attend such sale and bid thereat such an amount as he deems best in the interest of the village not exceeding, however, the aggregate amount due upon the liens and certificates of sale held by the village, plus the amount of all prior liens and the legal costs and expenses of the action and sale. [2]Any person having any mortgage or other lien upon any lot or parcel of land, or any portion of any lot or parcel of land, included in any action brought under this act, after having commenced an action to foreclose such lien or mortgage, may pay to the plaintiff in the action brought under this act at any time before a sale is had in pursuance of judgment therein, the amount of such plaintiff's claim together with his costs and disbursements and thereupon the plaintiff in said action to foreclose such mortgage or other lien shall be entitled to tax the amount so paid as an item of disbursement to be included in his costs and to recover the same out of the proceeds of any sale of said lot or parcel of land, or portion of such lot or parcel of land, had under the judgment in said action to foreclose such mortgage or other lien, or the referee appointed by the judgment in said last mentioned action to conduct said sale may pay the same out of the proceeds of such sale as part of the expenses of such sale.

[2] Following sentence new.

[3] "included in any tax sale had by him or any tax sale certificate executed by him" in place of "involved in any action brought as hereinbefore provided, to which the village is a party."

[4] "or of" in place of "the".

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Actions instituted hereunder on account of tax sale certificates held by any village shall be commenced by the village treasurer in his discretion or whenever instructed to do so by the village board of trustees. For the purpose of instituting such action, the village treasurer is authorized to employ an attorney, whose compensation shall be limited to the costs recoverable in each action instituted by him.

New. Added by L. 1913, ch. 234, § 1. It was amended by L. 1914, ch. 310, § 1. The amendments are shown in the footnotes.

§ 138-a. *[Town receiver of taxes as village received] in each village in this state within a county having a population of more than three hundred thousand, and less than four hundred thousand, according to the last state enumeration prior to the passage of this act, when in and for any such county a special tax act has been heretofore or hereafter enacted, providing for, among other things a town receiver of taxes with duties to collect all state, county, town, school and town district taxes and assessments levied or assessed upon any taxable property within such town for the state, county, town, school or town tax district or part thereof therein, the board of trustees, if authorized so to do by special election called for the purpose, shall after such authorization designate and appoint the town receiver of taxes as a village receiver of taxes at a compensation per annum not to exceed one per centum of the total of the village tax roll of each year respectively, and such designation and appointment shall be made annually at the first meeting of the village board after the commencement of the term of members of the board elected at the immediately preceding village election, and the term of office as village receiver of taxes of such town receiver when so designated and appointed shall continue for one year or if his term of office as town receiver expires within the year, then shall continue until the expiration within such year of his term of office as town receiver, and in the event that his term of office as town receiver expires within such year the vacancy in the office of village receiver of taxes thus created shall be filled by a like designation and appointment by the village board of the successor in office of such town receiver of taxes which said new designation and appointment of said successor in office of such town receiver of taxes shall continue for the remainder of said year and until the next annual like designation and appointment of the town receiver of taxes as village receiver of taxes by the village board. The said town receiver of taxes when so designated and appointed as village receiver of taxes shall in respect to the collection of village taxes and as to all his duties with respect to village taxes be deemed to

* Section enacted without heading. Head added for facility of reference.

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act exclusively as the village tax receiver, and as such village receiver of taxes he shall before entering upon the duties of such office execute to the village and file with the village clerk an official undertaking in such sum and with such sureties as the village board of trustees shall direct and approve, and the village board of trustees may at any time require such officer to file a new official undertaking for such sum and with such sureties as the village board shall approve, and in any village where a proposition has been adopted giving the authority as aforesaid to the board of trustees to designate and appoint the town receiver of taxes as village receiver of taxes, thereafter there shall be no village collector of taxes elected until such time as after a period of two years following the adoption of such proposition, a proposition shall be adopted at a special election revoking the authority to designate and appoint the town receiver of taxes as village receiver of taxes as aforesaid. From and after the passage of this act it shall be the duty of any such town receiver of taxes in addition to the other duties imposed upon him by law, to file an undertaking as herein required and to collect village taxes and perform all the other duties herein required of a village receiver of taxes and all of the provisions of the general village law relating to a collector of taxes, and as to villages incorporated under special laws, of any special laws applicable to any such village not incorporated under the general village law, and all provisions at the time of the passage of this act in force relating to the collection of taxes, not inconsistent with this act, shall be deemed to continue in force and to apply to said receiver of taxes in the collection of village taxes, and shall be deemed to apply to the collection of village taxes, provided, however, that the penalties to be collected under said law or laws shall belong to the village, and provided further that all such village taxes, assessments, and penalties thereon shall be daily deposited in the village bank account and a duplicate deposit slip or receipt therefor together with an itemized statement of the taxes, assessment and penalties paid shall be transmitted to the treasurer of the village and an itemized report thereof when required by the village board shall be submitted to said board.

New. Added by L. 1916, ch. 556, § 1.

§ 138-b. *[Certification and collection of taxes.] All village taxes and assessments which have been or shall have been imposed in any such village shall be certified to said receiver of taxes by the treasurer of the village and shall be collected by the receiver of taxes, and any cancellations thereof by the proper authorities in accordance with law shall immediately upon any such cancella-

* Section enacted without heading. Head added for facility of reference.

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tion be certified to said receiver of taxes, and all such village taxes remaining unpaid and uncancelled shall be collected by the said receiver of taxes and deposited and a report made thereon to the village treasurer and whenever required to the village board, as set forth in the last preceding section for the collection of current taxes. In case that all taxes and assessments which shall have accrued and been imposed in such village, the said receiver of taxes is hereby authorized, directed and empowered to collect such taxes as hereinbefore provided, with interest and penalties, pursuant to the provisions of the law under which such taxes and assessments accrued or were imposed, and in the manner provided by law applicable to village collectors or receivers and to village treasurers to collect such taxes or assessments at the time of their imposition.

New. Added by L. 1916, ch. 556, § 1.

§ 138-c. [Submission of proposition relating to sales.] Whenever a proposition as provided in section one hundred and thirty-eight-a to authorize the designation and appointment of the town receiver of taxes as a village receiver of taxes shall be submitted at a special election there shall also be submitted at the same special election a separate proposition to authorize sales of village tax liens for village taxes and assessments in accordance with said special tax law applicable to said county and upon the adoption of such proposition all the provisions of said special tax law for said county for the sales of tax liens for taxes and assessments, and the foreclosure thereof, including each and every provision of said special act relating to sales and foreclosures of tax liens and all the pleadings and proceedings of such foreclosure actions shall apply to the village tax liens and to village tax sales and foreclosure of transfer of tax liens in every respect and to the same extent as to village taxes as by said special act is made applicable to town taxes, and for this purpose the village board shall be authorized to contract with the supervisor of the town, or said receiver of taxes, as the case may be, to sell and transfer for the village, village tax liens at the same time and in the same manner, and with the same force and effect and under all the provisions thereof as provided in said act, and whenever the said supervisor or receiver of taxes conducts a sale of village tax liens, he shall be deemed to act as an officer of the village exclusively for the village, and shall immediately account and pay over to the village, and for this purpose he shall prior to the conduct of said sales give a bond to the village to be approved by the village board as to amount and sufficiency of sureties and his compensation shall not exceed an amount to be fixed by the village board

* Section enacted without heading. Head added for facility of reference.

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and approved by the town board and shall not exceed one per centum of the total moneys received by him for and on behalf of the village, and at any such sale the village may be a purchaser and the said compensation so fixed to the supervisor or to said receiver shall be added to the amount of the tax as an additional penalty for the nonpayment thereof and the disbursements of the said supervisor or receiver authorized by said special tax act as to town taxes are hereby authorized as to village taxes, and upon vouchers therefor countersigned by such supervisor or receiver, the same shall be paid by the village the same as other village charges.

New. Added by L. 1916, ch. 556, § 1.

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ARTICLE 6

Streets, Sidewalks and Public Grounds

Section 140. Definitions.
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142. Care of bridges.
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145. Petition for street improvement or acceptance.
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146. Notice of meeting of board to consider petition.
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165. Sprinkling streets.
166. Pavements and sidewalks.
167. Trimming trees.
167-a. Appropriations for shade trees.
168. Local assessments under this article.
169. Acquisition of lands for parks, squares, athletic fields and playgrounds.
169-a. Acquisition of real property by gift, for municipal purposes.
170. Lighting and care of streets and roads in certain subdivisions.
171. Dedication of land for parkway.
172. Village may acquire street for parkway.
173. Village board may improve dedicated streets.
174. Franchise rights in streets not to be included.

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§ 140. Definitions. The term "street" as used in this article also includes a highway, road, avenue, lane or alley which the public have a right to use; and the term "pavement" includes a macadam, telford, asphalt, brick or other similarly improved roadbed, and is only applied to the portion of the street between the sidewalks or established curb lines.

This section was derived from Village Law, L. 1897, ch. 414, § 140.
Provisions applicable to certain villages: see infra, § 310 et seq.
Provisions applicable to a village embracing the entire territory of a town: see infra, § 322 et seq.
Term "highway" as used in Highway Law: see HIGHWAY LAW, § 2, subd. 5.

§ 141. Separate highway district. The streets and public grounds of a village, except as provided in the next section, are under the exclusive control and supervision of the board of trustees. The board of trustees may expend a portion of the street fund upon outside highways connected with the village streets.

This section was derived from Village Law, L. 1897, ch. 414, § 141.
Duty as to removal of street encroachments: see supra, § 80 note.
Liability of town for defective highways: see HIGHWAY LAW, § 74 note.
Street commissioner as subject to direction of board of trustees: see supra, § 84 note.

Control of improved highway after incorporation of village.— Immediately upon the incorporation of a village the improved highway within its limits comes under the jurisdiction of the board of trustees of the village and is not subject to the control of the highway superintendent of the town. Op. Atty.-Gen. (1903) 333.

Right of village to town highway funds.—An incorporated village has no right to any portion of the highway funds of the town raised either by taxation or contributed by the state, even though the highway tax was collected before the incorporation of the village. Op. Atty.-Gen. (1911) 504.

Expense of widening state road in village.—Where the width of a state highway is increased within a village by petition of the village board the increased expense must be borne by the village and cannot be shared by the town within whose boundaries the village lies. Op. Atty.-Gen. (1912) 287.

Resort of village to court of equity to preserve streets.— By virtue of the present section village authorities have the powers formerly vested in highway commissioners by the Highway Law with regard to the control and administration of village streets, and they may resort to a court of equity for the preservation of the village streets and highways, and for the protection of the rights of the public therein, whenever their permanency and the public use thereof are menaced. Haverstraw v. Eckerson, (1908) 192 N. Y. 54, 84 N. E. 578, 20 L. R. A. (N. S.) 287, affirming 124 App. Div. 18, 108 N. Y. S. 506, holding that where the owner of lands adjacent to a village street, by digging or excavating upon his lands, affects the lateral support and causes or threatens the subsidence of the street, the village authorities may properly invoke a court of equity to restrain such acts. See to the same effect Oxford v. Willoughby, (1905) 181 N. Y. 155, 73 N. E. 677, affirming 87 App. Div. 609, 83 N. Y. S. 1118, holding that a village might maintain an action to enjoin encroachments upon the public streets.

Right of village electors to vote on town highway proposition.— It was ruled in Op. Atty.-Gen. (1913) 22, that in view of the fact that property in incorporated villages was liable for the expense of permanent improvement of highways under section 203 of the Highway Law, which makes damages for laying out highways a general town charge with no exemption of villages, electors of villages were entitled to vote on a proposition submitted at a special town meeting for the reconstruction and permanent improvement of highways without the boundaries of the village but within the town in which

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they were situated. Similarly it was ruled in Op. Atty.-Gen. (1911) 144, that unless a village was incorporated under a special charter exempting property within its limits from all taxation for laying out highways and for construction and maintenance of bridges in the town, its residents were entitled to vote for superintendent of highways. See to the same effect Op. Atty.-Gen. (1905) 511; Op. Atty.-Gen. (1898) 104; Op. Atty.-Gen. (1895) 364.

Liability for negligence in care of streets.—The streets of a village being placed by the statute under the exclusive control and supervision of the board of trustees, they are charged with the affirmative duty of keeping them reasonably safe, and their negligence in this regard renders the village liable in damages to those who have sustained injuries by reason thereof. Fordham v. Gouverneur Village, (1899) 160 N. Y. 541, 55 N. E. 290, reversing judgment 15 App. Div. 624, 44 N. Y. S. 1117; Seymour v. Salamanca, (1893) 137 N. Y. 364, 33 N. E. 304; Pomfrey v. Saratoga Springs, (1887) 104 N. Y. 459, 11 N. E. 43; Nelson v. Canisteo, (1885) 100 N. Y. 89, 2 N. E. 473; Russell v. Canastota, (1885) 98 N. Y. 496; Saulsbury v. Ithaca, (1883) 94 N. Y. 27, 26 Am. Rep. 122; Weed v. Balston Spa, (1879) 76 N. Y. 329; Conrad v. Ithaca, (1857) 16 N. Y. 158; Lyman v. Potsdam, (1916) 173 App. Div. 390, 159 N. Y. S. 71; Finkle v. Valatie, (1906) 114 App. Div. 251, 99 N. Y. S. 715; Bradner v. Warrick, (1904) 91 App. Div. 408, 86 N. Y. S. 935; Dennis v. Elmira Heights, (1901) 59 App. Div. 404, 70 N. Y. S. 312; Halstead v. Warsaw, (1899) 43 App. Div. 39, 59 N. Y. S. 518; Barr v. Bainbridge, (1899) 42 App. Div. 628, 59 N. Y. S. 132; Mullen v. Glens Falls, (1896) 11 App. Div. 275, 42 N. Y. S. 113; Dexter v. Fulton, (1895) 86 Hun 433, 33 N. Y. S. 901; Hoyer v. North Tonawanda, (1894) 79 Hun 39, 29 N. Y. S. 650; Kirk v. Homer, (1894) 77 Hun 459, 28 N. Y. S. 1009; Sherman v. Oneonta, (1892) 66 Hun 629 mem., 21 N. Y. S. 137, 49 N. Y. St. Rep. 267, affirmed (1894) 142 N. Y. 637, 37 N. E. 566, 60 N. Y. St. Rep. 867 mem.; Champlin v. Penn Yan, (1884) 34 Hun 33, affirmed (1886) 102 N. Y. 680; Wallace v. Canandaigua, (1909) 117 N. Y. S. 917. A village is not, however, an insurer against accidents to persons using its streets; it is bound only to exercise such reasonable care and diligence in repairing and caring for its highways and removing obstructions therefrom as may be required by the location and the extent of the use of the highways. McKone v. Warsaw, (1907) 187 N. Y. 336, 80 N. E. 212, reversing judgment 89 App. Div. 616, 84 N. Y. S. 1134; King v. Ft. Ann, (1905) 180 N. Y. 496, 73 N. E. 481, reversing judgment 90 App. Div. 617, 85 N. Y. S. 1135; Butler v. Oxford, (1906) 186 N. Y. 444, 79 N. E. 712, reversing judgment 101 App. Div. 611, 92 N. Y. S. 1118; Dougherty v. Horseheads, (1899) 159 N. Y. 154, 53 N. E. 799, reversing 5 App. Div. 625, 39 N. Y. S. 447; Horey v. Haverstraw, (1891) 124 N. Y. 273, 26 N. E. 532, reversing judgment 47 Hun 356, 14 N. Y. St. Rep. 498; Gorham v. Cooperstown, (1875) 59 N. Y. 660; Abbey v. Watkins, (1916) 175 App. Div. 660, 161 N. Y. S. 688; Frank v. Warsaw, (1906) 116 App. Div. 618, 101 N. Y. S. 938; Rodrigues v. Ossining, (1906) 111 App. Div. 297, 97 N. Y. S. 742; O'Shaughnessey v. Middleport, (1904) 93 App. Div. 93, 86 N. Y. S. 944; Smith v. Henderson, (1900) 54 App. Div. 26, 66 N. Y. S. 347; McNish v. Peekskill, (1895) 91 Hun 324, 36 N. Y. S. 1022, reargument denied 2 App. Div. 617, 37 N. Y. S. 1147, affirmed on second appeal 22 App. Div. 631, 48 N. Y. S. 210; Neddo v. Ticonderoga, (1894) 77 Hun 524, 28 N. Y. S. 887, affirmed (1895) 148 N. Y. 735, 42 N. E. 724.

Snow and ice on sidewalks.—A village has the affirmative duty to keep its sidewalks reasonably free from accumulations of ice and snow, and neglect in this regard renders it liable to persons injured by reason thereof. Keane v. Waterford, (1891) 130 N. Y. 188, 29 N. E. 130; Bishop v. Goshen, (1890) 120 N. Y. 337, 24 N. E. 720; Powers v. Moravia, (1908) 123 App. Div. 191, 108 N. Y. S. 159; Morris v. Saratoga Springs, (1900) 55 App. Div. 263, 66 N. Y. S. 821; Thompson v. Saratoga Springs, (1897) 22 App. Div. 186, 47 N. Y. S. 1032; Goff v. Little Falls, (1892) 65 Hun 662 mem., 20 N. Y. S. 175, 47 N. Y. St. Rep. 729; Colburn v. Canandaigua, (1888) 48 Hun 615, 15 N. Y. St. Rep. 668, affirmed (1889) 114 N. Y. 617, 20 N. E. 880, 22 N. Y. St. Rep. 996 mem.; La Duke v. Fulton, (1884) 20 Wkly. Dig. 453, affirmed (1887) 106 N. Y. 680, 13 N. E. 938. The duty, however, which rests upon a village to remove accumulations of ice and snow as it forms or falls from time to time

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on its streets is a qualified one, and becomes imperative only when dangerous formations or obstacles have been created and notice of their existence has been received by the village or they have existed for such a length of time as to charge the village with notice. Ayres v. Hammondsport, (1891) 130 N. Y. 665, 29 N. E. 265; O'Shaughnessey v. Middleport, (1904) 93 App. Div. 93, 86 N. Y. S. 944; Anthony v. Glens Falls, (1896) 4 App. Div. 218, 38 N. Y. S. 536, affirmed (1897) 153 N. Y. 682, 48 N. E. 1104; Buck v. Glens Falls, (1896) 4 App. Div. 323, 38 N. Y. S. 582, appeal dismissed (1898) 156 N. Y. 683, 50 N. E. 1115; Grimm v. Greenbush, (1888) 50 Hun 605 mem., 3 N. Y. S. 76, 20 N. Y. St. Rep. 370.

The rule of liability of municipalities for snow and ice on sidewalks has been illustrated in the numerous cases that have been brought against cities. See the following city cases where recovery was upheld: Berger v. New York, (1901) 65 App. Div. 394, 73 N. Y. S. 74; O'Hara v. Brooklyn, (1901) 57 App. Div. 176, 68 N. Y. S. 210; Deufel v. Long Island City, (1897) 19 App. Div. 620, 46 N. Y. S. 355; Stone v. Poughkeepsie, (1897) 15 App. Div. 582, 44 N. Y. S. 609; Conklin v. Elmira, (1896) 11 App. Div. 402, 42 N. Y. S. 518; Hawley v. Gloversville, (1896) 4 App. Div. 343, 38 N. Y. S. 647; Stapleton v. Newburgh, (1896) 9 App. Div. 39, 41 N. Y. S. 96; Ney v. Troy, (1888) 50 Hun 604 mem., 3 N. Y. S. 679, affirmed (1890) 123 N. Y. 628, 25 N. E. 952. In the following city cases recovery was denied: Lichtenstein v. New York, (1899) 159 N. Y. 500, 54 N. E. 67, reversing judgment 29 App. Div. 542, 51 N. Y. S. 642; Brennan v. New York, (1909) 130 App. Div. 267, 114 N. Y. S. 578, affirmed (1910) 197 N. Y. 544 mem.; Kortlang v. Mt. Vernon, (1908) 129 App. Div. 535, 114 N. Y. S. 252; Cupp v. Elmira, (1908) 126 App. Div. 539, 110 N. Y. S. 742 (rule stated); Moran v. New York, (1904) 98 App. Div. 301, 90 N. Y. S. 596; Rogers v. Rome, (1904) 96 App. Div. 427, 89 N. Y. S. 130; Foley v. New York, (1904) 95 App. Div. 374, 88 N. Y. S. 690; Hawkins v. New York, (1900) 54 App. Div. 258, 66 N. Y. S. 623; O'Keefe v. New York, (1898) 29 App. Div. 524, 51 N. Y. S. 710; Blakeley v. Troy, (1879) 18 Hun 167.

Necessity of notice of defect.— In order to charge a village with liability for personal injuries sustained by a person through the defective condition of street or sidewalk it must appear that the defective condition has existed so long that the village is chargeable with notice of it. Carson v. Dresden, (1909) 129 App. Div. 728, 113 N. Y. S. 959,; Benjamin v. Tupper Lake, (1905) 110 App. Div. 426, 97 N. Y. S. 512; Aslen v. Charlotte, (1898) 35 App. Div. 625, 54 N. Y. S. 754. Where the unsafe condition of a village street is caused directly by the act of the corporation itself, or its agents, liability for injuries sustained attaches directly, and not through the doctrine of notice, either express or constructive. Riddle v. Westfield, (1892) 65 Hun 432, 20 N. Y. S. 359. See in this connection Pomfrey v. Saratoga Springs, (1887) 104 N. Y. 459, 11 N. E. 43; Ladrick v. Green Island, (1905) 103 App. Div. 71, 92 N. Y. S. 622; Cummings v. New Rochelle, (1899) 38 App. Div. 583, 56 N. Y. S. 701.

Liability of village for negligence of lot owners in making sewer connections.—Where a village permits the owners of lots along the streets to connect drains with the sewers for the purpose of draining their lots it does not make itself responsible for the improper conduct of those employed by the owners to do the work, in the absence of any want of proper care on the part of its officers in keeping the streets in a safe condition for use by the public. Masterton v. Mt. Vernon, (1874) 58 N. Y. 391.

Obligation to repair where village accepts sidewalk not constructed by it.— Where an individual voluntarily puts down a sidewalk a village is not bound to adopt it as its own, but if by acquiescence in the act for a sufficient length of time, and by other acts, it accepts the sidewalk it assumes with it the obligation to keep it in repair. Hiller v. Sharon Springs, (1882) 28 Hun 344. The same rule applies where natural ground adapted for the purpose of a walk constitutes a section of a continuous sidewalk and has been adopted and used as such by the public. Higgins v. Glens Falls, (1890) 57 Hun 594, 11 N. Y. S. 289, 33 N. Y. St. Rep. 111, affirmed (1891) 124 N. Y. 666, 27 N. E. 855, 37 N. Y. St. Rep. 964 mem.

Personal liability of trustees.—Although the statute places the streets of a village under the exclusive control and supervision of the board of trustees,

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they are not liable as individuals for personal injuries received by reason of defects therein; their negligence is that of the corporation Hungerford v. Waverly, (1908) 125 App. Div. 311, 109 N. Y. S. 438.

Action over by village against person causing defect.—A village which has been compelled to pay a judgment recovered against it for damages sustained by a person through an obstruction, defect or excavation in a sidewalk or street of the village, has an action over against the one who negligently or unlawfully creates the defect which causes the injury. Port Jervis v. Port Jervis First Nat. Bank, (1884) 96 N. Y. 550; Seneca Falls v. Zalinski, (1876) 8 Hun 571. Where an electric light pole in a village street has been declared a nuisance and damages have been recovered against the village for personal injuries caused by the obstruction, the village has no recourse against the electric light company when it has given affirmative consent to the location and maintenance of the pole. Geneva v. Brush Electric Co., (1889) 50 Hun 581, 3 N. Y. S. 595. In the absence of statute or contract no duty rests upon an adjoining owner to keep a village sidewalk in repair, and such an owner cannot be charged with the amount of a recovery which has been had against the village in an action against it for negligence in suffering a sidewalk to be out of repair. Fulton v. Tucker, (1875) 3 Hun 529. Compare Haskell v. Penn Yan, (1871) 5 Lans. 43.

§ 142. Care of bridges. If, at the time this chapter takes effect, the board of trustees of a village has the supervision and control of a bridge therein, it shall continue to exercise such control under this chapter. In any other case, every public bridge within a village shall be under the control of the commissioners of highways of the town in which the bridge is wholly or partly situated, or such other officer as may be designated by special law, and the expense of constructing and repairing such bridge and the approaches thereto is a town charge, unless the village assumes the whole or part of such expense.

This section was derived from Village Law, L. 1897, ch. 414, § 142.

Duties of boards of supervisors relating to bridges: see COUNTY LAW, § 61 et seq.

Provisions of Highway Law relating to bridges: see HIGHWAY LAW, § 250 et seq.

When village not liable for defective bridge.—A village is not liable for injuries received by a person by reason of the defective condition of a bridge within its corporate limits, if prior to the incorporation of the village the bridge was under the exclusive jurisdiction of the town, unless pursuant to the present section or section 143, infra, the village has assumed to repair or exercise jurisdiction over the bridge. Taylor v. Matteawan, (1907) 122 App. Div. 406, 106 N. Y. S. 841. See to the same effect Washburn v. Mount Kisco, (1885) 35 Hun 329; Schell v. German Flats, (1907) 54 Misc. 445, 104 N. Y. S. 116, affirmed 123 App. Div. 197, 108 N. Y. S. 219; Op. Atty.-Gen. (1890) 73.

Care of railroad bridge continuing highway.—A bridge erected by a railroad company within a village for the purpose of continuing the highway across its tracks must be maintained by the village in a reasonably safe condition, such bridge not being a "public" bridge within the meaning of the present section. Hence, a plaintiff suing for personal injuries alleged to have been caused by negligence in the maintenance of such bridge should not be nonsuited upon the ground that the town rather than the village should have been made defendant. Murphy v. Ft. Edward, (1913) 158 App. Div. 342, 143 N. Y. S. 378, reversing 79 Misc. 296, 140 N. Y. S. 885.

§ 143. When village may construct or repair bridges. A village may assume the control, care and maintenance of a bridge or

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bridges wholly within its boundaries, upon the adoption of a proposition therefor, at a village election; or a proposition may be adopted authorizing the board of trustees to enter into an agreement with the commissioners of highways of a town, in which any part of such village is situated, to construct or repair a bridge in any part of the village included in such town at the joint expense of the village and town, which agreement shall fix the portion to be paid by each.

This section was derived from Village Law, L. 1897, ch. 414, § 143.

§ 144. Dedication of streets. An owner of land in a village who has laid out a street thereon may dedicate such street, or any part thereof, or an easement therein, to the village for a public street, or an owner may dedicate for such purpose land not laid out as a street. Upon an offer in writing by the owner to make such a dedication, the board of trustees shall meet to consider the matter; and it may, by resolution, determine to accept a dedication of the whole or any part of the land described in such offer, or of the whole or any part of such street, to be described in such resolution. Upon the adoption of such a resolution the owner may execute and deliver to the village clerk a proper conveyance of the land to be dedicated. The board of trustees may, by resolution, accept the conveyance, and a certified copy of such resolution, together with the conveyance, shall thereupon be recorded in the office of the county clerk. Upon the acceptance of the conveyance the land described therein shall become and be a public street of the village. No street less than two rods in width shall be accepted by dedication [1]unless a proposition therefor be submitted to and adopted at a village election after consideration and approval by the board of trustees, as provided in sections one hundred and forty-five, one hundred and forty-six and one hundred and forty-seven of this article. All offers of dedication must be entered at length in the minutes of the board of trustees.

This section was derived from Village Law, L. 1897, ch. 414, § 144. It was amended by L. 1916, ch. 10, § 1. The amendment is shown in the footnote.

Dedication of land for parkway: see infra, § 171.

Highways by dedication: see HIGHWAY LAW, § 191.

Highways by use: see HIGHWAY LAW, § 209.

Improvement of dedicated streets: see infra, § 173.

Village may acquire street for parkway: see infra, § 172.

Effect of deed to street less than two rods in width.— Except as provided in this section a village cannot accept the dedication of a street which is less than two rods in width, and a deed thereto does not operate to grant to the public a right or easement of passage so that the care and maintenance of the street may properly be considered a public burden. Smith v. Smythe,

[1] Remainder of sentence new.

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(1910) 197 N. Y. 457, 90 N. E. 1121, 35 L. R. A. (N. S.) 524, reversing order 132 App. Div. 71, 116 N. Y. S. 1071.

Application of provision as to width of streets.—The provision of the present section as to width of streets refers only to the creation of public highways by dedication and acceptance, and not to their creation by laying out over land acquired by purchase or condemnation. Allen v. Kebler, (1912) 76 Misc. 40, 134 N. Y. S. 369.

Cited.—This section was cited in Carroll v. Silver Creek National Gas, etc., Co., (1912) 153 App. Div. 630, 139 N. Y. S. 161, in connection with the question as to the right of a gas company to lay pipes in newly opened streets.

§ 145. Petition for street improvement [1]or acceptance. Five resident freeholders may present to the board of trustees a petition for laying out, altering, widening, narrowing, [2]discontinuing [3]or accepting the dedication of a street in the village. The petitioners must deposit with such petition the sum of fifty dollars to cover all expenses for publishing, posting and serving notices of meeting of board to consider the petition. If petition be granted said deposit [4]shall be returned in full to the petitioners, but if denied, the surplus only [5]shall be so returned after paying expenses mentioned in this section. The petition must be addressed to the board of trustees and must contain a statement of the following facts:

1. The names and residences of the petitioners.

2. If the petition be for the laying out of a street, the general course thereof, and a description of the land to be taken.

3. If the petition be for the alteration of a street, its name, the proposed alteration, and a description of the land, if any, to be taken.

4. If the petition be for the widening of a street, its name and description of the land to be taken.

5. If the petition be for the narrowing of a street, its name, its proposed width after such alteration, and the manner in which such narrowing is to be effected.

6. If the petition be for the discontinuance of a street, its name, and the part proposed to be discontinued.

7. If the petition be for the laying out, alteration or widening of a street, the names and residences of the owners of all lands to be taken.

8. If the petition be for the narrowing or discontinuance of a street, the names and residences of the owners of adjoining lands affected.

[6]9. If the petition be for the acceptance of a street of less than two rods in width, the width and length of such street, the name

[1] "or acceptance" new.
[2] "or" omitted.
[3] "or accepting the dedication of" new.
[4] "shall" in place of "to."
[5] "shall be so returned" new.
[6] Subdivision 9 new.

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and residence of each owner of land adjoining the same and the improvements to be included in such dedication.

This section was derived from Village Law, L. 1897, ch. 414, § 145. It was amended by L. 1911, ch. 310, § 1. This amendment added the second and third sentences, the second sentence being afterwards amended as shown in the footnote. The section was further amended by L. 1916, ch. 10, § 2. The amendments are shown in the footnotes.

Franchise rights in streets not to be included: see infra, § 174.

Necessity of observance of statutory formulas.—The proceedings for village street improvements being entirely statutory can be upheld only where it appears that there has been a substantial observance of the provisions of the statute under which they are taken. People v. Whitney's Point, (1881) 32 Hun 508, affirmed (1886) 102 N. Y. 81, 6 N. E. 895. See also Merritt v. Portchester, (1877) 71 N. Y. 309, 27 Am. Rep. 47, reversing judgment 8 Hun 40; Matter of South Market St., (1894) 76 Hun 85, 27 N. Y. S. 843.

Right to lay out street across railroad track.—A village may lay out a street across the track of a railroad without violation of the rule that where lands have been devoted to one public use they cannot be taken for another without special authority from the legislature, since this rule applies only where it is sought to deprive the person or corporation to which the first public use is granted of the substantial use of the property. Matter of Folts St., (1897) 18 App. Div. 568, 46 N. Y. S. 43.

Right of women taxpayers to institute proceedings.—The right to present a petition under the present section may be exercised by an adult resident woman who owns property assessed upon the last preceding assessment roll of the village. Op. Atty.-Gen. (1901) 198. See infra, § 336.

§ 145-a. Street improvements in villages of second class. A street in a village of the second class shall not be laid out, altered or widened if the entire cost of such improvement including the acquisition of necessary land and the construction of such street exceed one thousand dollars, unless a proposition therefor be submitted to and adopted at a village election. A petition for such improvement in a village of the second class shall contain an estimate of the cost thereof, and if such estimate exceed one thousand dollars, shall be accompanied by proof that such improvement has been authorized by the adoption of a proposition at a village election.

New. Added by L. 1911, ch. 403, § 1.

§ 146. Notice of meeting of board to consider petition. Upon the presentation of the petition the board shall immediately give notice that it will meet at a specified time and place, not less than ten nor more than twenty days from the date of such notice, to consider the petition. The notice must state the general object of the petition, and if it be for the laying out of a street, a general description of its proposed course, and in any other case, the name of the street proposed to be changed, [1]discontinued [2]or accepted.

The notice must be served upon the following persons, unless such service be waived by them in writing:

[1] " or " omitted.

[2] " or accepted " new.

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1. If the petition be for the laying out of a street, upon each owner of land to be taken.

2. If the petition be for the alteration or widening of a street, upon each owner of land, if any, to be taken, and upon each owner of land adjoining the part of the street affected.

3. If the petition be for the narrowing of a street, upon each owner of land adjoining the part of the street affected.

4. If the petition be for the discontinuance of a street, upon each owner of land adjoining the part of the street proposed to be discontinued, and also upon the owner of land otherwise affected by the proposed discontinuance.

[3]5. If the petition be for the acceptance of a street of less than two rods in width, upon each owner of land adjoining the same.

[4]If a person other than the owner is in possession of such land, notice must also be served upon him. Such notice shall also be published in each newspaper in the village, and posted in five conspicuous places therein. The notice must be served, posted and published at least ten days before the hearing.

[5]6. If the street petitioned to be laid out, altered, widened, narrowed, [6]discontinued [7]or accepted shall cross a railroad such notice shall be served upon the railroad company as required by section ninety of the railroad law.

This section was derived from Village Law, L. 1897, ch. 414, § 146. It was amended by L. 1912, ch. 224, § 1, by which a subdivision 5, now subdivision 6, was added. The section was further amended by L. 1916, ch. 10, § 3. The amendments are shown in the footnotes.

Manner of serving notice: see infra, § 330.

Proof of posting: see infra, § 331.

Character of interest entitling one to notice.—To bring a landowner in the category of those affected by the proposed discontinuance of a street it is not necessary that the action of the village board in closing the street should be such as would entitle him to maintain an action for damages. "It is enough that the discontinuance would work injury to him in fact, as by reducing the value of his neighboring property. People v. Shaw, (1898) 34 App. Div. 61, 54 N. Y. S. 218.

§ 147. Meeting and determination of board. The board shall meet at the time and place specified in the notice to consider the petition and also any objections thereto. A person affected by the proposed improvement, and upon whom notice has not been served, may appear upon the hearing. A voluntary general appearance of such a person is equivalent to personal service of the notice upon him. The board may adjourn the hearing, and must determine the matter within twenty days from the date fixed for such hearing. If the board determine to grant the petition an

[3] Following paragraph new.
[4] Following paragraph formerly part of subdivision 4.
[5] Formerly subdivision 5.
[6] "or" omitted.
[7] "or accepted" new.

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order must be entered in its minutes containing a description of the land, if any, to be taken.

This section was derived from Village Law, L. 1897, ch. 414, § 147.

Necessity of determination at a meeting of the board.— A determination by the board of trustees as to the discontinuance of a street to be valid must be made at a meeting of the board as such. The law takes no account of what the trustees may individually agree upon in the matter on the outside. People v. Shaw, (1898) 34 App. Div. 61, 54 N. Y. S. 218.

Timeliness of determination.— Where a hearing on the matter of widening a village highway is fixed for April 21, and a determination thereon is made by the board of trustees on May 11, following, the determination is made within twenty days as required by the statute. People v. Van Brunt, (1904) 99 App. Div. 564, 90 N. Y. S. 845. See GENERAL CONSTRUCTION LAW, § 20.

Power of trustees to restore proceedings after discontinuance.— Village trustees have power to discontinue proceedings for the extension of a street, but they cannot restore such proceedings, after discontinuance, as against parties who have in the meantime acquired new rights from the legislature. Matter of Folts St., (1898) 29 App. Div. 69, 51 N. Y. S. 390.

§ 148. Effect of determination. The determination by the board has the following effect:

1. If the petition for the laying out, alteration or widening of a street be granted, the board of trustees may acquire the land for such improvement by purchase or by proceedings under this article or by proceedings under the condemnation law. But no street shall be laid out through a building or any fixtures or erections for the purposes of trade or manufacture, or any yard or inclosure necessary to be used for the enjoyment thereof, without the consent of the owner, except upon the order of a justice of the supreme court residing in the judicial district in which the village or a part thereof is situated, to be granted upon an application by the board of trustees on a notice to the owner of not less than ten days.

2. If the petition for the narrowing of a street be granted, the board shall enter upon its records a description of the street after such narrowing, and the portion of the former street not included in such description is abandoned.

3. If the petition for the discontinuance of a street be granted, such street or the part thereof so discontinued is abandoned.

This section was derived from Village Law, L. 1897, ch. 414, § 148. It was amended by L. 1913, ch. 126, § 1, which added the words "or by proceedings . . . the condemnation law" at the end of the first sentence in subdivision 1.

Use of old street until establishment of new one.— An order made by the board of trustees of a village that a certain street be closed or discontinued, "and that a new street be built before traffic is abandoned" on the old street, should be construed to mean that the old street is to remain a public highway until the new street is established, and should be confirmed, where the new street furnishes an ample way for a corporation which now uses the old street as the only means of ingress and egress to and from its plant. People v. Gokey, (1917) 177 App. Div. 61, 163 N. Y. S. 693.

Determination of trustees as reviewable by certiorari.— The action of a village board of trustees in making a determination to discontinue a street is judicial in its character, and is therefore reviewable by certiorari. People v. Shaw, (1898) 34 App. Div. 61, 54 N. Y. S. 218.

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§ 149. Application for commissioners; notice of application. If a petition for the laying out, alteration or widening of a street be granted, and the board can not agree with an owner upon the purchase-price of land necessary to be acquired, an application may be made by the board to the county court of the county in which such land is situated, for the appointment of three commissioners to determine the compensation to be made to such owner. At least ten days before the making of such application a notice specifying the time and place thereof must be served upon such owner.

This section was derived from Village Law, L. 1897, ch. 414, § 149.
Manner of serving notice: see infra, § 330.

§ 150. Appointment of commissioners. Upon such application the county court must appoint as such commissioners three resident disinterested freeholders of the county in which such land is situated, not residents of the village nor nominated by a person interested in the proceeding. In case of a vacancy another commissioner may be appointed in like manner. The order of appointment must contain the name of each person whose compensation is to be determined by the commissioners.

This section was derived from Village Law, L. 1897, ch. 414, § 150.
Constitutionality of assessment of damages by commissioners: see CONSTITUTION, art. I, § 7 note.
County court always open: see infra, § 342.

§ 151. Notice of meeting of commissioners. The commissioners shall file with the village clerk the constitutional oath of office. They shall appoint a time and place for a hearing and serve a notice thereof upon the board of trustees and upon each person named in the order. Such notice must be served at least ten days before the hearing, which must be held within twenty days after their appointment.

This section was derived from Village Law, L. 1897, ch. 414, § 151.
Form of constitutional oath: see CONSTITUTION, art. XIII, § 1.
Manner of serving notice: see infra, § 330.
Official oaths generally: see PUBLIC OFFICERS LAW, § 10 et seq.

§ 152. Meeting and award of commissioners. The commissioners shall meet at the time and place appointed and may adjourn from time to time. They shall personally examine the land, compensation for which is to be determined by them, and may take testimony in relation thereto. They shall keep minutes of their proceedings and reduce to writing all evidence taken by them. They shall award to each owner of land named in the order the compensation to which he may be entitled after making allowance for any benefit he may derive from the improvement.

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After the appointment of the commissioners and before any evidence is taken on the hearing, the board may make an agreement with an owner named in the order for the compensation to be made to him. If such an agreement be made, notice thereof must be served upon the commissioners, and thereupon the proceeding as to such owner is discontinued. The award shall be signed by a majority of the commissioners, and, together with the minutes of their proceedings, the evidence taken by them, and any notice of agreement served upon them, shall be filed in the office of the village clerk.

This section was derived from Village Law, L. 1897, ch. 414, § 152.

Power of commissioners as to defining boundaries.— It is for the board of trustees in the first instance to make a survey and definite description of a proposed street. The commissioners have no power in this respect, their function being solely to determine and award to the owners of the lands to be taken their damages. People v. Haverstraw, (1893) 137 N. Y. 88, 32 N. E. 1111.

Application of provision as to compensation.— It has been held that unless the provisions of the present section relating to compensation are limited to consequential damages resulting to a portion of a tract not taken, and are not applied to actual damages for land actually taken, the statute would be unconstitutional. Matter of Pondfield Road, (1913) 156 App. Div. 890, 141 N. Y. S. 1143. See also People v. Nelson, (1914) 162 App. Div. 34, 146 N. Y. S. 1035; Matter of Forty-Eighth St., (1897) 19 App. Div. 602, 46 N. Y. S. 311.

§ 153. Appeal from award of commissioners. The board of trustees, or an owner to whom an award has been made by the commissioners, may, within twenty days after the filing of the award, appeal therefrom to the county court by which the commissioners were appointed. Such appeal shall be taken by a notice of appeal to be served as follows:

1. If the appeal be taken by the board of trustees, notice thereof must be filed by the village clerk in his office, and addressed to and served upon each owner to whose award objection is made by the board.

2. If the appeal be taken by an owner, the notice of appeal must be addressed to the board of trustees and served upon the village clerk.

The notice must in either case briefly state the grounds upon which the appeal is taken.

This section was derived from Village Law, L. 1897, ch. 414, § 153.

§ 154. Return by clerk. Within ten days after such appeal the village clerk shall transmit to the county judge the petition filed with the board for the laying out, alteration or widening of the proposed street, all papers and evidence in the proceeding subsequently filed in his office, and a certified copy of each resolution of the board of trustees relating to the improvement.

This section was derived from Village Law, L. 1897, ch. 414, § 154.

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§ 155. Hearing of the appeal. The appeal may be brought on by either party by a notice of not less than ten nor more than twenty days. If the appeal is by the board of trustees, it brings up for review all proceedings by or before the commissioners and the award made by them. If the appeal is by an owner, it brings up for review all proceedings relating to the proposed improvement. If the appeal is by the board of trustees, and two or more owners are made respondents, the county court may affirm or reverse the award of the commissioners as to the whole or any number of such owners; and if the appeal is by an owner, the county court may affirm or reverse the award.

If the award be reversed, the order of reversal must state the reasons therefor, and if upon grounds relating to the amount of the award, or for errors in the proceedings by the commissioners, it must direct a rehearing before the same or other commissioners.

If it appears from the order of the county court that the award is reversed solely upon grounds relating to the amount of compensation, or for errors in the proceedings by the commissioners, no further appeal shall be allowed. The order of the county court upon such appeal, together with the papers transmitted by the village clerk, must be filed by the county judge in the office of such clerk. The order must also be entered in the office of the county clerk.

This section was derived from Village Law, L. 1897, ch. 414, § 155.

§ 156. Compensation of commissioners. Each commissioner is entitled to five dollars for each day actually and necessarily spent in such proceeding, together with his necessary traveling and incidental expenses. Such compensation and expenses are a charge against the village.

This section was derived from Village Law, L. 1897, ch. 414, § 156.

§ 157. Costs on appeal. Costs on appeal may be allowed as follows:

1. If on appeal by the board of trustees the award of the commissioners be affirmed, the county court may allow to the respondent costs of such appeal, against the village, not exceeding twenty-five dollars.

2. If on such an appeal the award be reversed on the ground that as to a specified owner it is excessive, the court may fix the amount of costs, not exceeding fifty dollars, to be stated in the order, to be paid by the village to such owner, if upon a rehearing the amount awarded to him is not more favorable to the village by the amount of such costs than the first award.

3. If on appeal by an owner the award be affirmed, costs not exceeding twenty-five dollars may be awarded against him, to be recovered by the village.

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4. If on such an appeal the award be reversed, the county court may allow to the owner a sum not exceeding twenty-five dollars for the costs of appeal, which shall be a charge against the village.

This section was derived from Village Law, L. 1897, ch. 414, § 157.

§ 158. Payment for property acquired for street improvement. Upon the making of an agreement for compensation to an owner under this article, or upon the final order or award fixing the amount of such compensation in proceedings therefor, the board shall immediately pay such amounts and the costs, if any, allowed in such proceedings, if it has funds available for that purpose; if not, money may be borrowed and certificates of indebtedness bearing interest issued therefor, or like certificates may be issued for such amounts, and payable, in either case, not more than one year from the date thereof; and the amount of such certificates shall be included in the next annual tax levy.

This section was derived from Village Law, L. 1897, ch. 414, § 158.
Borrowing money generally: see supra, § 128.
Funded debt: see GENERAL MUNICIPAL LAW, § 6.
Temporary loans: see GENERAL MUNICIPAL LAW, § 5.

§ 159. Changing grade of street or bridge. 1. If a village has exclusive control and jurisdiction of a street or bridge therein, it may change the grade thereof. If such change of grade shall injuriously affect any building or land adjacent thereto, or the use thereof, the change of grade, to the extent of the damage resulting therefrom, shall be deemed the taking of such adjacent property for a public use. A person claiming damages from such change of grade must present to the board of trustees a verified claim therefor within sixty days after such change of grade is effected. The board may agree with such owner upon the amount of damages to be allowed to him, or make to him a verified offer to settle or compromise such claim. If no agreement be made within thirty days after the presentation of the claim, the person presenting it may apply to the supreme court for the appointment of three commissioners to determine the compensation to which he is entitled. Notice of the application must be served upon the board of trustees at least ten days before the hearing thereof. All proceedings subsequent to the appointment of the commissioners shall be taken in accordance with the provisions of the condemnation law, so far as applicable, except that the commissioners in fixing their award must make an allowance for benefits, if any, derived by the claimant from such improvement. The amount agreed upon for such damages or the award therefor, together with the costs, if any, allowed to the claimant, shall be a charge against such village. Unless the award of the commissioners in favor of the claimant shall exceed the amount of the offer to settle or com-

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promise such claim, he shall be liable for all the costs of the proceeding. The board may borrow money for the payment of the award, costs, amount agreed upon and expenses, or may issue certificates of indebtedness therefor, in the same manner as in case of damages for laying out a street.

2. Whenever the grade of any street, highway or bridge in any incorporated village in this state shall be changed or altered so as to *interefere in any manner with any building or buildings situate thereon, or adjacent thereto, or the use thereof, or shall injure or damage the real property adjoining such highway so changed or altered, the owner or owners of such building or real estate may apply to the supreme court in the judicial district in which such property is situated for the appointment of three commissioners to ascertain and determine the amount of damage sustained thereby; due notice of such application shall be given to the person or persons having competent authority to make such change or alteration. All the provisions of the condemnation law in relation to the appointment of commissioners, their powers, duties, fees and expenses, shall be applicable to the appointment of, and the powers, duties, fees and expenses of the commissioners appointed in pursuance of the provisions hereof; but it shall be the duty of said commissioners in assessing and ascertaining the damages sustained by property owners adjoining such street or highway to take into consideration and to ascertain the value of any benefits or advantages to the property in consequence of the alteration of the grade; and in all cases the value of such benefits or improvements shall be offset against and deducted from the damages; and no person or property owner shall be entitled to recover any damages who shall, in writing, request or assent that the said grade of any such street shall be changed or altered. All damages ascertained and determined under the provisions of this subdivision, together with the costs of such proceedings, shall be a charge, when allowable, upon the village, town or other municipality chargeable with the maintenance of the street, highway or bridge so altered or changed; but no property owner or person instituting proceedings to recover damages under the provisions of this subdivision shall be entitled to costs, unless the claim for such damages shall have first been presented to and rejected by, or neglected to have been adjusted for thirty days after presentation by the trustees or other proper officers of said village, town or municipality, nor in case such trustees or other proper officers shall have made an offer to settle or compromise such claim, which offer is declined by said property owner, unless he shall recover more than is so offered; and in case he fails to recover any damages, or less than offered, he shall be liable for the costs

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of such proceeding. When either party is entitled to costs under this subdivision, they shall be the same costs and at the same rates as prescribed in the condemnation law, and the court may grant an additional allowance of costs to the prevailing party at the same rates as provided by the condemnation law.

This subdivision shall not apply to the change of grade of streets, highways or bridges by village authorities.

This section was derived from Village Law, L. 1897, ch. 414, § 159, as amended by L. 1901, ch. 68, § 1.

Abolition of railroad grade crossings: see HIGHWAY LAW, § 145.

Condemnation proceedings generally: see Code Civ. Pro., § 3357 et seq.

Damages for change of grade: see HIGHWAY LAW, §§ 59, 59-a.

Manner of service of notice: see infra, § 330.

Common law rule.— At common law damage caused to an abutting owner by a change of the grade of a street by the municipal authorities was damnum absque injuria. Matter of Grade Crossing Commissioners, (1911) 201 N. Y. 32, 94 N. E. 188, reversing order 138 App. Div. 349, 122 N. Y. S. 922; Torge v. Salamanca, (1903) 176 N. Y. 324, 68 N. E. 626, reversing order 86 App. Div. 211, 83 N. Y. S. 672; Folmsbee v. Amsterdam, (1894) 142 N. Y. 118, 36 N. E. 821, affirming 66 Hun 214, 21 N. Y. S. 42; Johns v. Salamanca, (1908) 129 App. Div. 717, 114 N. Y. S. 707; Lawton v. New Rochelle, (1908) 123 App. Div. 832, 108 N. Y. S. 583, reversing on other grounds 51 Misc. 184, 100 N. Y. S. 771, affirmed (1908) 193 N. Y. 656, 87 N. E. 1121; Triest v. New York, (1907) 55 Misc. 459, 105 N. Y. S. 571, affirmed 126 App. Div. 934, 110 N. Y. S. 1148, reversed on other grounds (1908) 193 N. Y. 525, 86 N. E. 549.

Jurisdiction of commissioners.— The sole power conferred by the statute upon the commissioners is to assess damages; they have no power to determine the regularity of the proceedings instituted by the petitioner, nor can such power or jurisdiction be conferred by stipulation between the claimant and the village. Matter of Caffrey, (1900) 52 App. Div. 264, 65 N. Y. S. 470.

Statute as applicable to vacant lot.— Recovery of damages caused by a change of grade of a village street is authorized under the present section, although the land injured is vacant and unimproved. Staub v. Mamaroneck, (1915) 165 App. Div. 755, 151 N. Y. S. 485, overruling Lester v. Blaisdell, (1912) 137 N. Y. S. 491.

Application of statute after reincorporation of village as city.— It has been held that although a landowner conveys lands to a village for a public street at a time when by the statute he is entitled to damages for a change of grade, he cannot maintain a proceeding under the statute when a change in the grade of the street is made after the village is reincorporated as a city. And this is true although the charter of the city preserves the contracts, obligations and liabilities of the village and imposes them upon the city, because as the change of grade is not made until after the reincorporation, no cause of action has arisen or accrued under the statute. Lawton v. New Rochelle, (1908) 123 App. Div. 832, 108 N. Y. S. 583, reversing 51 Misc. 184, 100 N. Y. S. 771, affirmed (1908) 193 N. Y. 656, 87 N. E. 1121. In this connection see Triest v. New York, (1908) 193 N. Y. 525, 86 N. E. 549, reversing 126 App. Div. 934, 110 N. Y. S. 1148, which affirmed 55 Misc. 459, 105 N. Y. S. 571.

Establishment of grade by usage.— A grade of a street may become established by usage, acquiescence and recognition, without any formal ordinance on the part of the municipality, and damages may be awarded for a change of such grade. Folmsbee v. Amsterdam, (1894) 142 N. Y. 118, 36 N. E. 821, 58 N. Y. St. Rep. 626, affirming 66 Hun 214, 21 N. Y. S. 42; Hunt v. Otego, (1914) 160 App. Div. 158, 145 N. Y. S. 495; Matter of Greer, (1899) 39 App. Div. 22, 56 N. Y. S. 938; Matter of Myrick, (1891) 59 Hun 627, 13 N. Y. S. 948; McCall v. Saratoga Springs, (1890) 56 Hun 639, 9 N. Y. S. 170, 29 N. Y. St. Rep. 699, affirmed (1890) 121 N. Y. 704, 24 N. E. 1100; Bartlett v. Tarrytown, (1890) 55 Hun 492, 8 N. Y. S. 739; Bartlett v. Tarrytown,

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(1889) 52 Hun 380, 5 N. Y. S. 240; Nicholoy v. Newark, (1911) 130 N. Y. S. 1033.

Removing inequalities of street as change of grade.— If the only act of the village authorities consists of causing the inequalities of the street to conform to an already established and existing grade there is no change of grade within the meaning of the statute. Comesky v. Suffern, (1904) 179 N. Y. 393, 72 N. E. 320, reversing order 83 App. Div. 137, 81 N. Y. S. 1049; Whitmore v. Tarrytown, (1893) 137 N. Y. 409, 33 N. E. 489; Bissell v. Larchmont, (1901) 57 App. Div. 61, 67 N. Y. S. 962. See also McMullen v. Marlborough, (1914) 163 App. Div. 73, 148 N. Y. S. 505; Hunt v. Otego, (1914) 160 App. Div. 158, 145 N. Y. S. 495.

Raising of sidewalk as change of grade.—The raising of the sidewalk is a change of grade within the meaning of the present section. Nicholoy v. Newark, (1911) 130 N. Y. S. 1033.

Contract for grading as equivalent to formal resolution by trustees.— Where the trustees of a village by resolution award a contract for changing and grading a street pursuant to certain specifications which expressly provide that the village engineer shall give the lines and grades for the work, and that it must conform thereto, such action by the trustees is equivalent to a formal resolution or ordinance directing the change of grade. Matter of Simiele, (1916) 176 App. Div. 25, 162 N. Y. S. 285.

Vender of property as entitled to compensation.— If real property is damaged by a change of grade of a street the person who suffers the damage is the one who owns the property at the time the grade is changed; one who purchases the property after the change of grade has been effected is not entitled to compensation. People v. Stillings, (1909) 134 App. Div. 480, 119 N. Y. S. 298, affirmed (1910) 200 N. Y. 525 mem.

Claim by tenants in entirety.— Since the enactment of the Married Woman's Acts, a husband and wife owning land as tenants by the entirety have equal rights. Each is a tenant in common with the right of survivorship, and when land so owned by a husband and wife has been damaged by a change of grade in a village street, an award to the husband does not bind the wife nor include her interest, and she may make her claim for damages independent of her husband. Goodrich v. Otego, (1915) 216 N. Y. 112, 110 N. E. 162, reversing order 170 App. Div. 927, 154 N. Y. S. 1124. Where a husband and wife are the owners of an estate by the entirety, and such land is injured by a change in the grade of a village street, the husband can institute and maintain a proceeding for an assessment of damages to such property without joining his wife, his co-tenant, as a party to the proceeding, but the damage to which he is entitled should be given for the diminution of the value of his estate as a tenant by the entirety, and not as rents and profits or damages to his use and occupation. Goodrich v. Otego, (1915) 216 N. Y. 112, 110 N. E. 162, reversing 170 App. Div. 927, 154 N. Y. S. 1124. See also Goodrich v. Otego, (1914) 160 App. Div. 349, 145 N. Y. S. 497.

Benefits from paving as proper offset.— Benefits conferred by the paving of the newly graded street are not properly an offset to the damages sustained by the regrading. Matter of Bradley, (1910) 68 Misc. 514, 125 N. Y. S. 142.

Itemizing award.— In making their report after appraisal, the commissioners should state that, in fixing their award, they have considered the question of benefits, but they should not itemize the award by allowing a specific sum for damage to, and loss of, shade trees as part of the damages to the fee of the premises. Goodrich v. Otego, (1915) 216 N. Y. 112, 110 N. E. 162, reversing order 170 App. Div. 927, 154 N. Y. S. 1124.

Validity of award covering fee and rental damages.— Where, upon motion to confirm the report of commissioners appointed in proceedings instituted under the statute, it appears that there has been no interference in any manner with buildings of the claimants, or the use of them, during the progress of the work or improvement, and that the right of access to the premises has not been interfered with, nor the street closed or obstructed so as to hinder or prevent travel or traffic, the award of the commissioners as to fee damages will be confirmed; but their award of rental damages, based solely upon diversion of travel and traffic, will be disapproved. Hoy v. Salamanca, (1907) 57 Misc. 81, 107 N. Y. S. 208.

Power of court to set aside award.— On a motion to confirm the report of the commissioners of appraisal the court has no power to modify the report.

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nor to set it aside, except for errors of law by the commissioners, or because they adopted and proceeded upon an erroneous theory or principle in fixing the damages; inadequacy or excessiveness of the award will not authorize the court to set it aside unless it appears that the award is so grossly excessive or inadequate as to shock the conscience of the court. Cornish v. South Nyack, (1911) 136 N. Y. S. 390.

Liability of village for injury to turnpike.— Where a village in making a change in the grade of a street proceeds without notice or warning to tear up and partly destroy a turnpike road, it is liable to the turnpike company in damages, as the continuing duty of the company to maintain the turnpike in a proper condition must be enforced against it in a legal and reasonable manner. Fayetteville, etc., R., etc., Co. v. Fayetteville, (1902) 37 Misc. 223, 75 N. Y. S. 180.

Change in grade to abolish railroad crossing.— It was held in Melenbacker v. Salamanca, (1907) 188 N. Y. 370, 80 N. E. 1090, affirming 116 App. Div. 691, 101 N. Y. S. 1073, that where the grade of a village street was changed pursuant to an order of the board of railroad commissioners for the purpose of abolishing a grade crossing, under the provisions of the Railroad Law (L. 1890, ch. 565, § 62, as amd.), an abutting property owner, whose premises had been injured by such change, could not recover damages therefor where he had failed to file a notice of claim for such damages with the board of railroad commissioners, within six months after the completion of the work, in compliance with section 65 of the Railroad Law (L. 1890, ch. 565, § 65, as amd. by L. 1900, ch. 517), notwithstanding a notice of such claim was filed with the clerk of the village, within sixty days after the completion of the work in conformity with the statute (L. 1883, ch. 113, as amd. by L. 1884, ch. 281, and L. 1894, ch. 172), providing when damages caused by a change in the grade of a street in an incorporated village shall be paid by the municipality, since the latter statute must be read in connection with the sections of the Railroad Law by which the change of grade in question was expressly authorized and under which the damages must be paid by the railroad company, the municipality and the state in certain proportions after an adjustment, by the board of railroad commissioners, of all the claims paid or presented within six months after the completion of the work. See in this connection Torge v. Salamanca, (1903) 176 N. Y. 324, 68 N. E. 626, reversing order 86 App. Div. 211, 83 N. Y. S. 672; Matter of Stack, (1888) 50 Hun 385, 3 N. Y. S. 231.

When limitation period begins to run.— The word "effected" is used in the statute in the sense of "completed," and the time for the presentation of a claim for damages for change of grade of street does not commence to run until the improvement is completed: Phipps v. North Pelham, (1910) 61 App. Div. 442, 70 N. Y. S. 630; Stillman v. North Olean, (1911) 142 App. Div. 300, 126 N. Y. S. 728.

Estoppel to claim damages.— An abutting owner by voting at a special village election in favor of a proposition to issue bonds for the grading of a street does not waive his right to damages. Hunt v. Otego, (1914) 160 App. Div. 158, 145 N. Y. S. 495. In this connection see Stillman v. North Olean, (1911) 142 App. Div. 300, 126 N. Y. S. 728.

Costs.— The allowance of costs for all proceedings prior to the appointment of the commissioners is in the discretion of the court, under section 3240 of the Code of Civil Procedure; and under the provisions of section 3372 of the code the landowner who has been awarded damages on account of a change of street grade is entitled to recover costs of the proceeding subsequent to the appointment of the commissioners at the same rate as is allowed, of course, to a defendant when he is the prevailing party in an action in the supreme court. Matter of Bradley, (1911) 145 App. Div. 49, 129 N. Y. S. 450. See also Bley v. Hamburg, (1903) 84 App. Div. 23, 82 N. Y. S. 35.

Statutory remedy as exclusive.— The right to compensation for a change in the grade of a street is created by the statute and the remedy thereunder is exclusive. Hoy v. Salamanca, (1907) 57 Misc. 81, 107 N. Y. S. 208.

Right to restrain improvement.— A landowner cannot restrain a village from changing the grade of a street; his remedy, if any, is for damages as provided in the present section. Rogers v. Attica, (1906) 113 App. Div. 603, 98 N. Y. S. 665, affirmed (1907) 188 N. Y. 625 mem.

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Certiorari to review report of commissioners.— Certiorari will not lie to review the report of the commissioners awarding damages occasioned by the change of grade of a village street. The remedy is to appeal from the final order confirming the report. People v. Cobb, (1884) 14 Abb. N. Cas. 403.

Order appointing commissioners as appealable.— An order of the appellate division, affirming an order of the special term appointing commissioners to ascertain the damages of a property owner by reason of a change of grade of a village street, although made in a special proceeding, is not a final order, and therefore (Code Civil Procedure, § 190) is not appealable as of right to the court of appeals. Matter of Grab, (1898) 157 N. Y. 69, 51 N. E. 398, dismissing appeal from 31 App. Div. 610, 52 N. Y. S. 395. As to appeal from such an order to the former general term, see Matter of Myrick, (1891) 59 Hun 627 mem., 13 N. Y. S. 948; Bartlett v. Tarrytown, (1890) 55 Hun 492, 8 N. Y. S. 739, wherein it was held that where there was no appeal from the order appointing commissioners, the propriety of their appointment could not be considered on an appeal from an order confirming their award.

Sewerage acts providing for change of grade as repealing general act.— It was held in Matter of Smiddy, (1892) 65 Hun 620 mem., 19 N. Y. S. 949, that the act of 1888 (L. 1888, ch. 311) and that of 1889 (L. 1889, ch. 201) creating a special system of sewerage for the village of New Rochelle and empowering the commissioners of drainage to change the grade of streets and to make payment of damages to private property occasioned thereby, did not repeal the general act of 1883 (L. 1883, ch. 113) making all incorporated villages liable for damages to real property adjoining any highway occasioned by a change of grade, and that a claimant could have his damages assessed under either the general or special acts.

§ 160. Streets on boundary lines. Whenever a street is on a line between two villages, or between a village and a city or town, the highway or street commissioners of such adjoining municipalities shall, on or before the first day of May in each year, meet at a time and place to be determined by them, and divide such street. The officers present at such meeting shall allot a part of the street to each municipality in such manner that the labor and expense of keeping such street in repair may be equal as nearly as practicable. The officers making such division shall, within ten days thereafter, file in the office of the clerk of each municipality a certificate showing the part of such street allotted to each.

This section was derived from Village Law, L. 1897, ch. 414, § 160.
Highway in two or more towns: see HIGHWAY LAW, § 206.

§ 161. Crosswalks and sidewalks. The board of trustees may construct and repair crosswalks upon the streets within the village. It may also construct and repair sidewalks upon such a street wholly at the expense of the village, or of the owners or occupants of the adjoining land, or partly at the expense of each, and may prescribe the manner of doing such work, and the kind of materials to be used therein. Upon the adoption of a proposition therefor in a village of the third or fourth class, all sidewalks shall thereafter be constructed and repaired wholly at the expense of the village. If a sidewalk is so required to be constructed or repaired wholly at the expense of the owners or occupants of the adjoining

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lands, a notice specifying the place and manner, and the time, not less than ten days, in case of a new walk, or not less than twenty-four hours in case of repairs, within which the sidewalk is required to be constructed or repaired, shall be served upon such owners or occupants. If an owner or occupant shall not construct or repair the sidewalk as required by the notice, the board of trustees may cause the same to be so constructed or repaired, and assess the expense thereof upon the adjoining land. If a sidewalk is to be constructed or repaired at the joint expense of the village and the owner or occupant, the board of trustees may cause the same to be constructed or repaired, and assess upon the adjoining land the proportion of the expense chargeable against the same; or it may direct the owner or occupant to contribute labor or materials therefor. If the lands of a turnpike company are used as a street in a village and the company collect tolls on its road, then the expense of constructing or repairing a sidewalk on so much of the street as is owned or controlled by the turnpike company, shall be chargeable against and assessed on the turnpike company, and the owners of the adjoining land shall not be chargeable therewith.

This section was derived from Village Law, L. 1897, ch. 414, § 161, as amended by L. 1905, ch. 98, § 1.

Local assessments under this article: see infra, § 168.

Turnpike corporations generally: see TRANSPORTATION CORPORATIONS LAW, § 120 et seq.

Scope of section.— By the present section the trustees of a village are authorized to adopt one of three plans for defraying the expense incurred in the construction of sidewalks. They may provide for their construction at the sole expense of the village, or at the sole expense of the abutters, or at the expense partly of the village and partly of the abutters. If the plan adopted should impose either the whole or part of the expense on the abutters, then in case the abutter fails to construct the sidewalk as required the trustees are authorized to do the work and assess the cost or his proper share thereof upon the abutter. Sanford v. Warwick, (1905) 181 N. Y. 20, 73 N. E. 490, reversing judgment 83 App. Div. 120, 82 N. Y. S. 466.

Injury to private sidewalk.— Where a village charter makes it the duty of a property owner to lay and maintain a sidewalk in front of his premises, he may hold a contractor excavating in the street for damages to the sidewalk caused by his negligence, although the work was done by permission of the village; and the measure of damages is the cost of repair. Fix v. Bellow-Merritt Co., (1910) 138 App. Div. 579, 123 N. Y. S. 248.

Cited.— This section was cited in Allter v. St. Johnsville, (1909) 130 App. Div. 297, 114 N. Y. S. 355, in connection with the question of local assessments. See infra, § 168 note.

§ 162. Credit for flagging sidewalks. Whenever the owner or occupant of lands adjoining a street shall, with the consent of the board of trustees that the village will bear a portion of the expense of construction thereof, evidenced by a vote of such board, construct along such street a sidewalk of stone, cement, brick or other similar material to be approved by the board, of the width of four feet or more, and of the value of at least fifty-five cents per square yard, surface measure, the board of trustees shall credit such

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owner or occupant on account of his assessment for street taxes [1]against the particular property along which the walk is constructed in such village a sum to be fixed by the board of trustees, not exceeding three-fourths of the actual and necessary expense of constructing such sidewalk; or, instead of such credit, may pay to such owner or occupant from the street fund of the current year a sum to be fixed by the board of trustees not exceeding one-half of the cost of such sidewalk. If credit is allowed, such owner or occupant shall be credited therewith upon the taxes which shall be assessed and levied against him for street purposes [2]upon the particular property along which said walk is constructed until the credit is exhausted, and in event of a sale or change of ownership of any property against which a credit is in operation for the purpose mentioned, said credit is to accompany or follow title to property until the credit is exhausted. Before the board of trustees shall so consent to bear a portion of the expense of construction of any such sidewalk, it shall fix the proportionate amount that shall be credited or paid by the village for all walks of the same kind which may thereafter, with such consent, be constructed therein; and such proportionate amounts, or either of them, may be changed from time to time thereafter by the board of trustees, but at no time within one year from the date of the last fixing or changing thereof.

This section was derived from Village Law, L. 1897, ch. 414, § 162, as amended by L. 1904, ch. 122, § 1. It was amended by L. 1911, ch. 515, § 1. The amendments are shown in the footnotes.

Local assessments under this article: see infra, § 168.

Pavements and sidewalks: see infra, § 166.

Direction of trustees as equivalent to consent.— A direction by village trustees to the owner of premises abutting on certain streets to construct a four-foot flag sidewalk is a consent to his so doing within the meaning of the present section; and where he complies with such direction he is entitled to reimbursement as therein provided notwithstanding the fact that under the authority of section 161 the board had previously resolved that the sidewalks of the village be constructed by the abutting property owners at their own expense, since the latter section must be deemed to apply to sidewalks generally, and the present section to those constructed of the material specified therein and of the better grade, the consent being required to keep their cost within the control of the board of trustees. Sanford v. Warwick, (1905) 181 N. Y. 20, 73 N. E. 490, reversing 83 App. Div. 120, 82 N. Y. S. 466.

Grading as part of expense of construction.— The expense of grading is to be considered as part of the expense of construction of the sidewalk. Op. Atty.-Gen. (1902) 211.

§ 163. Snow and ice on sidewalks. The board of trustees may require the owners or occupants of land fronting on sidewalks to keep them clear of snow and ice, and upon default, may cause such sidewalks to be cleared, and assess the expense thereof upon such adjoining land, or may cause the sidewalks on any street or

[1] "against the particular property . . . the walk is constructed" new.
[2] "upon the particular property . . . title to property" new.

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portion thereof to be kept clear of snow and ice, and assess the expense upon the adjoining land.

This section was derived from Village Law, L. 1897, ch. 414, § 163.

Liability of village for negligence in permitting accumulation of snow and ice on sidewalks: see supra, § 141 note.

Village ordinance to compel owners to clear snow and ice from sidewalks: see supra, § 90, subd. 11.

Snow and ice ordinance as proper exercise of police power.—It was held in Carthage v. Frederick, (1890) 122 N. Y. 268, 25 N. E. 480, 19 A. S. R. 490, 10 L. R. A. 178, that a village ordinance making it unlawful for abutting owners to allow snow, ice or other substance to collect and remain on the sidewalk so as to impede or render dangerous public travel thereon, and prescribing a penalty therefor, was a proper exercise of the police power.

§ 164. Cleaning streets. The board of trustees may cause the streets of the village or any part thereof to be cleared of rubbish or other accumulations thereon, injurious to the use or appearance thereof, and to cause all grass and weeds growing therein to be cut and removed once in each month from May to October, inclusive, wholly at the expense of the village or may assess the expense thereof, in whole or in part, upon the owners or occupants of the adjoining land. It shall be the duty of the board of trustees upon the receipt of a petition signed by the majority of the taxpayers on any street or streets, to cause such street or streets to be cleared of rubbish or other accumulations thereon injurious to the use or appearance thereof and assess the expense in whole or in part as aforesaid.

This section was derived from Village Law, L. 1897, ch. 414, § 164. It was amended by L. 1915, ch. 458, § 1. The section formerly read as follows: "The board of trustees may require the owners of land fronting upon the streets to keep the portion of the street between the land and the center of the street cleared of rubbish or other accumulations thereon, injurious to the use or appearance thereof, and to cause all grass and weeds growing therein to be cut and removed once in each month from May to October, inclusive. If the owner of such adjoining land shall fail to comply with such requirement the board of trustees may cause such work to be done, and assess the expense thereof upon such adjoining land."

Village ordinance to compel owners to clear dirt and other obstructions from sidewalks: see supra, § 90, subd. 11.

§ 165. Sprinkling streets. The board of trustees may cause the streets of the village or any part thereof to be sprinkled with water, oil or other dust-laying substance wholly at the expense of the village or [1]may assess the expense thereof, in whole or in part, upon the owners or occupants of the adjoining land, and in villages, except in Franklin county, having a sufficient water supply, it shall be the duty of the board of trustees, upon the petition signed by a majority of the taxpayers of any street or streets, to cause such street or streets to be sprinkled [2]with water, oil or other

[1] Section to here formerly read "The board of trustees may cause a street or a part thereof to be sprinkled and."

[2] "with water, oil or other dust-laying substance" new.

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dust-laying substance and assess the expense thereof in whole or in part as aforesaid.

This section was derived from Village Law, L. 1897, ch. 414, § 165, as amended by L. 1904, ch. 497, § 1. It was amended by L. 1912, ch. 125, § 1. The amendments are shown in the footnotes.

Sprinkling state and county highways: see HIGHWAY LAW, § 179.

§ 166. Pavements and sidewalks. The board of trustees may cause a street in the village, or part thereof, to be graded or the sidewalk to be constructed of stone, cement, brick or similar substance or flagged or curbed or the street paved, or any one or more of such acts performed wholly at the expense of the village, or of the owners of the adjoining land, or partly at the expense of each; but such street shall not be so graded, flagged or constructed as above provided or curbed or paved wholly at the expense of the owners of the adjoining land, unless a petition therefor be presented to the board of trustees signed by the owners of at least two-thirds of the frontage on the street, or portion thereof, proposed to be so improved, if the improvement is to consist of grading or curbing or paving, and by the owners of more than one-half of the frontage on the street or on the side thereof proposed to be improved if the improvement consists of flagging or otherwise constructing a sidewalk as above provided, and a hearing given thereon to all persons interested, on a notice of at least ten days. If such improvement is so required to be constructed or repaired wholly at the expense of the owners of the adjoining lands, a notice specifying the place and manner, and the time, not less than thirty days, within which the said improvement is required to be constructed or repaired, shall be served upon the owners. If an owner shall not construct or repair the street as required by the notice, the board of trustees may cause the same to be so constructed or repaired, and assess the expense thereof upon the adjoining land. If a street is to be so improved, constructed or repaired at the joint expense of the village and the owner of the adjoining land, the board of trustees may cause the same to be constructed or repaired, and assess upon the adjoining land the proportion of the expense chargeable against the same; or it may direct the owner to contribute labor or materials therefor. The total amount expended for street paving in any fiscal year from the moneys raised during such year, for street purposes, otherwise than in pursuance of a village election, shall not be more than one-half thereof. No land owner shall be required to grade, flag, construct sidewalk, curb or pave or bear the expense of so doing any portion of the street not in front of such land, nor beyond the center of the street. All grading done or flagging or sidewalk laid or curb set or pavements laid by the owners of adjoining land shall be laid under the super-

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vision and in accordance with the directions of the board of trustees. The expense of constructing a pavement or of grading done or flagging or sidewalk laid or curb set or any part thereof may be raised in an entire amount or in smaller amounts from time to time, as the board of trustees may determine. If any portion of such expense is to be borne by the village, bonds or certificates of indebtedness may be issued. If such expense or any part thereof is to be assessed upon adjoining land, the board of trustees may apportion it upon the lands and assess the same as a whole or by installments. Notice of an assessment based upon such apportionment shall be given to the land owners, who may pay the amounts assessed within ten days after such notice. At the expiration of that time bonds or certificates of indebtedness may be issued for the aggregate amount of such assessment then remaining unpaid. Taxes for the amount of such bonds or certificates issued on account of default in the payment of the amount apportioned upon the adjoining land shall be levied and collected in the manner prescribed by this chapter in case of unpaid assessments for the construction of sewers.

This section was derived from Village Law, L. 1897, ch. 414, § 166, as amended by L. 1907, ch. 44, § 1. It was amended by L. 1909, ch. 430, § 1.

Lien of assessment for local improvement: see supra, § 113.

Manner of serving notice: see infra, § 330.

Tax for unpaid sewer assessments: see infra, § 275.

Limit of liability of abutting owner.— Where a lot is situated in the corner of two streets in a village, and the street upon which the lot fronts is graded and paved under an ordinance which provides that one-half of the expense be paid by the village and the other half by an assessment upon the owners of lands abutting upon the street, the statute limits the liability of the owner to the expense for paving the street in front, and does not include an assessment for paving the intersecting street. O'Leary v. Glens Falls, (1910) 200 N. Y. 218, 93 N. E. 513, 21 Ann. Cas. 633, affirming 128 App. Div. 686, 112 N. Y. S. 932.

Assessment as subject to collateral attack.— Where the board of trustees of a village, having jurisdiction of the person assessed and the subject-matter, proceed regularly to levy an assessment for paving a village street, their action, though liable to review by certiorari, is not subject to collateral attack. In such a case it is not a defense to an action by the municipality to recover the assessment that the amount expended during the fiscal year for street paving was more than half the amount raised for street purposes, nor that the landowner was required to pay or bear the expense of paving a portion of a street not in front of such land or beyond the center of the street. Glens Falls v. McMullen, (1909) 62 Misc. 134, 116 N. Y. S. 49.

§ 167. Trimming trees. The board of trustees may require the owners of land to trim the trees in front thereof, and upon default, may cause such trees to be trimmed, and assess the expense thereof upon the adjoining land.

This section was derived from Village Law, L. 1897, ch. 414, § 167.

Allowance for shade trees: see HIGHWAY LAW, § 63.

Custody of shade trees: see HIGHWAY LAW, § 64.

Injuring shade trees: see HIGHWAY LAW, § 334.

Ownership of trees within bounds of any highway: see HIGHWAY LAW, § 333.

Trees along highways: see HIGHWAY LAW, § 61.

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§ 167-a. Appropriations for shade trees. In any incorporated village having no board of public works the board of trustees of such village may, by resolution, appropriate from the general or street funds, in any one year, a sum not to exceed two hundred dollars to be known as the "shade tree fund." Such fund shall be expended for the setting out or preservation of shade trees along the public streets of such village in such manner as the board of trustees may direct.

New. Added by L. 1915, ch. 438, § 1.

§ 168. Local assessments under this article. Whenever expenditures are made by the board of trustees for constructing or repairing sidewalks or pavements, trimming trees, sprinkling streets or keeping the sidewalks or streets cleared of weeds, ice, snow or other accumulations thereon, which under this article are assessable upon the land affected or improved thereby, the board shall serve a notice of at least ten days upon the owner or occupant of such property, stating that such expenditure has been made, its purpose and amount, and that at a specified time and place it will meet to make an assessment of the expenditure upon such land. The board shall meet at the time and place specified. It shall hear and determine all objections that may be made to such assessment, including the amount thereof, and shall assess upon the land the amount which it may deem just and reasonable, not exceeding, in case of default, the amount stated in the notice.

If the amount so assessed be not paid within twenty days after such assessment, an action to recover the amount may be maintained by the village against the owner or occupant liable therefor, or a special warrant may be issued by the board of trustees for the collection of such assessment, or the amount thereof may be included in the next annual tax levy.

This section was derived from Village Law, L. 1897, ch. 414, § 168.
Annual assessment-roll: see supra, § 104.
Annual tax levy: see supra, § 110.

Necessity of notice to owner.—Notice to the owner of the land is essential to the validity of an assessment for a local improvement. People v. New Rochelle, (1894) 83 Hun 185, 31 N. Y. S. 592.

Assessment for local improvement as belonging in annual assessment roll.—An assessment for a local improvement has no place in the annual village assessment roll which is solely the work of the assessors, and if collected by including the amount in the next annual tax levy as permitted by the present section it should be included in that levy by the trustees of the village. This is so even in villages where the trustees act also as assessors, for their duties and functions in the respective offices are distinct. Allter v. St. Johnsville, (1909) 130 App. Div. 297, 114 N. Y. S. 355.

Cited.—This section was cited in Gouverneur v. Gouverneur Cemetery Ass'n, (1909) 136 App. Div. 37, 120 N. Y. S. 221, reversing 62 Misc. 534, 116 N. Y. S. 1107, in connection with the question of the liability of a cemetery association for local improvements. See supra, § 113 note.

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§ 169. Acquisition of lands for parks, [1]squares, [2]athletic fields and playgrounds. The board of trustees may, on behalf of the village, accept by grant or devise a gift of land for a public park, [3]square, [4]athletic field or playground, within the village, or wholly within three miles of the boundaries thereof, or may submit to a village election a proposition to purchase land so located for such purpose at an expense, specified in the proposition, specifying the maximum amount to be paid therefor and the mode of raising such amount. If the proposition be adopted, the board may purchase such land accordingly, or, if unable to agree with the owners for the purchase thereof, may acquire title thereto by condemnation; but if the commissioners appointed in the condemnation proceedings shall fix the value of the land at a larger amount than authorized to be paid therefor by such election, the condemnation proceedings shall be abandoned and the costs of the defendants shall be paid by the village unless payment of such larger amount shall be authorized at a village election. [5]The board of trustees may lease in the name of the village lands within the village for a public park, athletic field or playground and may equip the same with suitable buildings, structures and apparatus and may thereafter maintain and improve the same at the expense of the village, but such lease shall not be made for a longer period than five years nor at an expense for each fiscal year exceeding one mill on every dollar of taxable property of the village as appears on the last preceding village assessment-roll unless authorized at a village election. [5]The amount of such rent shall be paid in annual instalments commencing with the date of the lease. Upon the acquisition of land for the purposes of this section, either by gift, [3]purchase [6]or lease, the board may establish and maintain [7]the same for its intended purposes and shall have the power to perform all the duties of a separate board of park commissioners as provided for in this chapter.

This section was derived from Village Law, L. 1897, ch. 414, § 169. It was amended by L. 1909, ch. 469, § 1, and by L. 1916, ch. 42, § 1. The amendments made by the last cited statute are shown in the footnotes.

Condemnation proceedings generally: see Code Civ. Pro., § 3357 et seq.

Condemnation of real property by municipalities: see GENERAL MUNICIPAL LAW, § 74.

Limitation of devises or bequests: see DECEDENT ESTATE LAW, § 17.

Power of villages to hold property in trust for parks and grounds: see GENERAL MUNICIPAL LAW, §§ 73, 140 et seq.

[1] " and " omitted.

[2] " athletic fields and playgrounds " new.

[3] " or " omitted.

[4] " athletic field or playground " new.

[5] Following sentence new.

[6] " or lease " new.

[7] " the same for its intended purposes and " in place of " a public park or square thereon and for that purpose."

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Description as limiting property taken.— It was held in Babylon v. Bergen, (1910) 68 Misc. 433, 124 N. Y. S. 871, that where at a village election a proposition to purchase certain land located within the corporate limits for a public park and containing a pond nearly three acres in area was carried, and the village, asserting its inability to agree with the owners for the purchase of the property, presented a petition to acquire title to certain property described as a margin of land entirely surrounding the pond and a strip of land adjacent to the creek of which the pond was an arm, and no reference was made in the petition to riparian rights or easements, excluding from the description the bed of the pond, it was unnecessary, upon a motion to dismiss the petition at the close of the plaintiff's case, to consider the rights of the property owners in the pond or creek as, under the description in the petition, there was no lawful attempt to take the pond or extinguish their rights in the creek.

§ 169-a. Acquisition of real property by gift, for municipal purposes. The board of trustees on behalf of the village may accept a gift by bequest, grant or devise of a site or building, or both, for municipal purposes.

New. Added by L. 1915, ch. 392, § 1.
Limitation of devises or bequests: see DECEDENT ESTATE LAW, § 17.

§ 170. Lighting and care of streets and roads in certain subdivisions. Whenever prior to the incorporation of any village now or hereafter incorporated, any portion of the territory subsequently included within the limits of such village has been subdivided on a map or plan thereof into building lots and designated as a park or by any other name, such portion of said territory being hereinafter designated as a "subdivision," and in such subdivision streets or roads are laid out not less than fourteen feet in width, which the board of trustees of said village is unable to accept by dedication because such streets are too narrow, or for any other reason, or where in any such case said board of trustees is willing to light and care for such streets and roads without the same being dedicated, and more than fifty dwelling houses shall have been constructed in said subdivision, the board of trustees of said village may provide for the lighting and care of such streets and roads, or any part thereof, in like manner as the other streets and roads of said village, provided that the amount expended annually for such purposes shall not exceed one-fourth of one per centum of the assessed value of the real property in said subdivision.

This section was derived from Village Law, L. 1897, ch. 414, § 170, as added by L. 1907, ch. 93, § 1.

Constitutionality.— The evident intent of the present section is not to confer power to accept the dedication of streets hitherto inhibited, but to authorize the expenditure of village moneys upon streets which are not to become highways but to remain private property, and its effect is to transfer a burden which rests on a corporation or individuals to a village and to authorize an expenditure of village money to discharge the same. This is a gift of village money in aid of private purposes, and violates section 10 of article 8 of the state constitution. Smith v. Smythe, (1910) 197 N. Y. 457, 90 N. E. 1121, 35 L. R. A. (N. S.) 524, reversing 132 App. Div. 71, 116 N. Y. S. 1071.

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§ 171. Dedication of land for parkway. An owner of land in a village of the fourth class containing a territory of less than one square mile who has laid out a street or streets thereon may dedicate such street or streets, or any part thereof, or an easement therein, to the village for a parkway or parkways, upon such terms, conditions, considerations, restrictions and reservations as he may elect to impose upon such dedication. Upon an offer in writing by the owner to make such dedication, the board of trustees shall meet to consider the matter; and it may, by resolution, determine to accept such dedication upon the terms, considerations, conditions, restrictions and reservations set forth in such dedication. Upon the adoption of such resolution the owner may execute and deliver to the village clerk a proper conveyance of the land within said street or streets to be dedicated, or of an easement therein, as the case may be, setting forth the terms, considerations, conditions, restrictions and reservations upon which said dedication is made. Thereupon said village shall hold said lands only as a parkway or parkways and may improve the same, subject to such terms, considerations, conditions, restrictions and reservations and subject also to such rules and regulations as the board of trustees of such village from time to time shall adopt for the care thereof and for restricting or excluding from the use thereof not inconsistent with said terms, considerations, conditions, restrictions and reservations in said dedication set forth. Provided, however, and only provided that as to each and every resident in any such village and as to each and every freeholder, owner of any land therein, his heirs, grantees and assigns, the right of access in and over any such street, and any and all other easements therein, shall be as full and complete as if the said land had been dedicated as and for a public street.

This section was derived from L. 1901, ch. 624, § 1.

§ 172. Village may acquire street for parkway. Any such private street or streets or easement therein may be acquired by any such village for the purpose of a parkway or parkways to be held by any such village as provided by section one hundred and seventy-one of this chapter, and subject to the rules and regulations of the board of trustees and to the rights of the freeholders and residents in said village as therein provided. Such street or streets may be thus acquired for such parkway or parkways in the manner and as set forth in sections one hundred and forty-five to one hundred and fifty-eight both inclusive of this chapter for laying out, widening, acquiring or discontinuing a street in a village. [1]Whenever in any such village in a county adjoining a city of the first class private streets have been heretofore dedicated or conveyed as public streets, contiguous to or continuations of

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parkways dedicated in accordance with section one hundred and seventy-one of this chapter, and in the opinion of the board of trustees, the said streets ought to be included in and form part of the system of parkways created by any such parkway dedication, the board of trustees may upon a petition signed by a majority in value, according to the last preceding village assessment-roll, of abutting property owners upon any such street, by resolution of said board, enter into a contract with abutting property owners, upon such consideration therefor as the board of trustees may determine, which shall be not less than at the rate of one hundred dollars for each thousand lineal feet of street, by which contract the board of trustees may bind the village to convey to any abutting property owner upon demand and upon payment of the consideration therefore in the proportion of the frontage owned by any such abutting property owner, the fee to the middle of the street, subject to an easement in the village to control and maintain the same as parkways, upon identically the same conditions, restrictions, and reservations, in every respect, imposed upon such existing parkways, by the grantor thereof in dedicating the same. Upon the adoption of any such resolution by the board of trustees, the street or streets named or described in such resolution shall thereupon become parkways, subject to identically the said same conditions, restrictions, and reservations in every respect, as those imposed upon such existing parkways, with the same rights to each abutting property owner to enjoy and enforce the same, in every respect, as possessed by abutting property owners upon such existing parkways, and in every respect the same as if such streets had originally been dedicated or conveyed, not as streets, but as parkways, subject to such conditions, restrictions, and reservations; and thereafter the board of trustees upon demand of any such abutting property owner and upon the payment of the consideration determined upon by said board and named in such resolution, in proportion to his frontage upon said parkway, must cause a conveyance to be executed by its president, granting and conveying to any such abutting property owner the fee to the middle of the street in front of his property, subject to said easements as aforesaid in the village for parkway purposes, and subject to the same rights of the village in every respect, possessed by the village in such existing parkways.

This section was derived from L. 1901, ch. 624, § 2. It was amended by L. 1914, ch. 207, § 1. This amendment added to the section all the matter following the second sentence.

§ 173. Village board may improve dedicated streets. Upon the acquisition by any such village of any private street or streets for a parkway or parkways as provided by either sections one

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hundred and seventy-one or one hundred and seventy-two of this chapter, the board of trustees of any such village shall have authority to improve the same as a parkway or parkways, subject only to the rights and easements hereby conferred upon any such resident or freeholder within said village to use the same as streets as fully as if the same had been dedicated or acquired as streets, and to the terms, conditions, restrictions and reservations in any such dedication contained, and the board of trustees shall maintain and shall construct and repair driveways through and upon any such parkway or parkways, may construct and repair crosswalks upon any such driveways, may construct and repair sidewalks and sidewalk lawns along and upon any such parkways, may cause such sidewalks to be kept clear of snow and ice and sidewalk lawns to be kept properly trimmed, may keep the land within such driveways clear of rubbish or other accumulations thereon, injurious to the use or appearance thereof, and may cause all grass or weeds growing therein to be cut and removed once in each month from May to October, inclusive, may cause such driveways or any part thereof to be sprinkled, and may plant trees and keep the trees within the said lawns or any such parkway or parkways trimmed, and may construct, repair and maintain a sewerage system and sewers through said parkways and permit the same to be used by abutting property owners; and the board of trustees may cause the expense of the proceeding to acquire any such street or streets for the purpose of such parkway or parkways, and the expense for improving or repairing any such driveway, crosswalk or sidewalk, and the expense or removing snow and ice from any such sidewalk, and the expense of keeping such sidewalk lawns properly cut and trimmed, and the expense of cleaning and sprinkling any such driveway and planting and trimming the trees in any such parkway, and the expense of constructing, repairing and maintaining any such sewerage system and sewers, to be paid wholly by the village, or wholly by the owner of the adjoining land, or partly by each, and the provisions of section one hundred and sixty-eight of this chapter shall be applicable to any such expenditures made by the board of trustees of any such village and assessed upon the land affected or improved thereby.

This section was derived from L. 1901, ch. 624, § 3.
Dedication of streets: see supra, § 144.

§ 174. Franchise rights in streets not to be included. In any proceeding authorized by section one hundred and seventy-two of this chapter to acquire any such street or streets for the purposes of a parkway or parkways in the manner and as set forth in sections one hundred and forty-five to one hundred and fifty-eight

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of this chapter, the village may exclude from the right sought to be acquired any property rights in any franchises theretofore granted in any such street or streets and any property rights in any mains or pipes existing under the surface of any such street or streets, and when so excluded the value of said property rights in any such franchises and in any such mains or pipes shall form no part of the damages to be paid for the rights or easements sought to be acquired by the village in such proceedings for the purposes in the last three sections set forth.

This section was derived from L. 1901, ch. 624, § 4.
Dedication of streets: see supra, § 144.

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ARTICLE 7

Police Department

Section 180. Jurisdiction of violations of ordinances.
181. Disposition of penalties; fees of justices.
182. Criminal jurisdiction of village police justice.
183. Records of police justice.
184. Compensation of village police justice.
185. Accounts, reports and payments of fees and fines by salaried police justice.
186. Civil jurisdiction of police justice.
187. Acting police justice.
188. Village policemen.
188-a. Police department.
189. Powers and duties of policemen.
190. Fees, salaries and expenses of policemen.

§ 180. Jurisdiction of violations of ordinances. Jurisdiction to hear, try and determine charges of violations of village ordinances is hereby conferred upon magistrates as follows:

1. A police justice, or, in case of his absence or inability to act, the acting police justice has exclusive jurisdiction, in the first instance.

2. In case of the absence or inability to act of both the police justice and the acting police justice, or if the office of police justice does not exist in the village, a justice of the peace of a town including any part of the village has jurisdiction exclusive of any other justice of the peace.

3. In cases not provided for in the foregoing subdivisions, any justice of the peace has jurisdiction.

This section was derived from Village Law, L. 1897, ch. 414, § 180.
Acting police justice: see infra, § 187.
Definition of ordinances: see supra, § 92.
Jurisdiction of police justices: see Code Crim. Pro., § 74.
Justices' courts generally: see Code Civ. Pro., § 2861 et seq.
Provisions applicable to a village embracing the entire territory of a town: see infra, § 322 et seq.
Provisions applicable to certain villages: see infra, § 310 et seq.
Village ordinances: see supra, § 90.
Violation of ordinances: see supra, § 93.
When ordinances to take effect: see supra, § 95.

§ 181. Disposition of penalties; fees of justices. Every penalty imposed by a justice of the peace for the violation of a village ordinance shall be paid to the village treasurer. In such cases the fees of the justice are a village charge.

This section was derived from Village Law, L. 1897, ch. 414, § 181.

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§ 182. Criminal jurisdiction of village police justice. The police justice of a village may hold a court of special sessions therein and shall have in the first instance exclusive jurisdiction to hear, try and determine charges of a misdemeanor committed within such village and triable by a court of special sessions, subject to the right of removal, as provided by the code of criminal procedure, to a court having authority to inquire by the intervention of a grand jury into offenses committed within the county. Such police justice shall have exclusive jurisdiction to take the examination of a person charged with the commission in such village of a crime not triable by a court of special sessions; and also to hear, try and determine charges against a person of being a vagrant or disorderly person within such village, or of having committed disorderly conduct therein; and to take such proceedings in either of such cases as may be taken by a justice of the peace, with all the powers and subject to all the duties and liabilities of a justice of the peace in respect thereto. Such police justice shall have all the power and authority, and be subject to all the duties and liabilities, of a justice of the peace in issuing warrants for the arrest of a person charged with the commission of a crime or disorderly conduct, in a county including any portion of such village, but if the offense is charged to have been committed outside of the village, the person arrested by such process shall be taken before another magistrate of the town in which such offense is charged to have been committed, and the papers upon which such process was issued shall be delivered to him, who shall proceed thereon as though such warrant had been issued by him upon such papers. A person arrested upon a criminal warrant issued by a justice of the peace upon a charge of committing a crime or an offense of a criminal nature within a village shall be taken before the police justice of such village, and the papers upon which the process was issued delivered to him, who shall proceed thereon as though such warrant had been issued by him upon such papers. The term "proceeding" as used in this article also includes a special proceeding of a criminal nature.

This section was derived from Village Law, L. 1897, ch. 414, § 182.

Jurisdiction of courts of special sessions: see Code Crim. Pro., § 56 et seq.

Jurisdiction of police justices: see Code Crim. Pro., § 74.

Exclusive jurisdiction of police justice.— A justice of the peace of a town has no authority to hear, try or determine a charge for a criminal offense committed in a village in the town when there is a police justice present in the village having the ability to act as such. People v. Whitney, (1898) 24 Misc. 264, 53 N. Y. S. 570, affirmed 32 App. Div. 144, 52 N. Y. S. 695; People v. Duffy, (1888) 49 Hun 276, 1 N. Y. S. 896. The legislature has the constitutional right to confer exclusive jurisdiction upon a police justice of a village, and in this way restrict the criminal jurisdiction of a justice of the peace to the balance of the town. People v. Whitney, (1898) 32 App. Div. 144, 52 N. Y. S. 695, affirming 24 Misc. 264, 53 N. Y. S. 570; People v. Duffy, (1888) 49 Hun 276, 1 N. Y. S. 896. In this connection see People v. Becker, (1911) 203 N. Y. 201, 96 N. E. 381, reversing 142 App. Div. 929, 127 N. Y. S. 1139; People v. Howland, (1898) 155 N. Y. 270, 49 N. E. 775, 41 L. R. A.

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838, affirming 17 App. Div. 165, 45 N. Y. S. 347; People v. Porter, (1882) 90 N. Y. 68, affirming 26 Hun 622; Sill v. Corning, (1857) 15 N. Y. 297; People v. Lane, (1900) 53 App. Div. 531, 65 N. Y. S. 1004.

Jurisdiction of justice of the peace.— The provisions of the present section are not designed to take away from a justice of the peace his jurisdiction over misdemeanors; and where an incorporated village has not established the office of police justice of the village a justice of the peace of the town in which the village is situated has jurisdiction to hear and determine a charge of misdemeanor where the offense is committed within the corporate limits of the village. People v. Lovell, (1897) 21 Misc. 570, 48 N. Y. S. 879. See also Op. Atty.-Gen. (1898) 110.

§ 183. Records of police justice. The board of trustees shall provide the police justice with suitable books in which he shall keep a record of all actions or proceedings for violations of village ordinances and of criminal actions and proceedings, had or tried before him, or in a court of special sessions held by him, which record in each case shall contain the names of the complainant and defendant, a statement of the nature of the offense charged and, under the proper dates, the proceedings therein, the minutes of all courts of special sessions held by him, and an accurate account of all fines, penalties, fees, expenses and costs imposed, received or ordered paid by him, in all such actions and proceedings.

This section was derived from Village Law, L. 1897, ch. 414, § 183.

§ 184. Compensation of village police justice. If the police justice of a village shall not be paid a salary, he shall be entitled to receive for his services the same fees as a justice of the peace for like services, to be paid in like manner, except that his fees in proceedings on account of violations of the village ordinances shall be paid by the village.

The board of trustees may determine that the police justice shall be paid a salary instead of fees, and may fix the amount thereof, and such salary shall not be increased or diminished during his term of office. Such salary shall be paid in equal monthly instalments by the treasurer, except that a ratable proportion shall be deducted from his salary because of any failure to perform his duties. The amount of such deduction shall be determined by the board of trustees and paid by the treasurer to the acting police justice or other justice who shall have acted during such period. Such police justice and acting police justice shall each report to the board of trustees, at the first regular meeting thereof in each month, the time, if any, during the next preceding calendar month that the police justice of such village failed to perform the duties of his office and the time during which the acting police justice or other justice performed such duties.

This section was derived from Village Law, L. 1897, ch. 414, § 184.
Compensation of justice: see Code Crim. Pro., § 78.

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Taking unlawful fees: see PENAL LAW, § 1826.

Power of court to compel trustees to fix salary.— It rests with the village trustees to decide whether the police justice shall receive fees or be paid a salary, and it is beyond the province of the supreme court to direct the trustees to fix the salary of the justice. People v. Wappingers Falls, (1895) 144 N. Y. 616, 39 N. E. 641, affirming 83 Hun 130, 31 N. Y. S. 758.

Increase of salary before payment under new term.— The trustees of a village are without power to increase the salary of a police justice by a resolution passed four days after his new term of office began pursuant to re-election, even though he has as yet received no salary for the new term. Andrews v. Pierson, (1916) 174 App. Div. 478, 160 N. Y. S. 542.

§ 185. Accounts, reports and payments of fees and fines by salaried police justice. If the police justice of the village is paid by salary, he shall not receive for his own benefit any fees, costs or expenses in any action or proceeding, but shall demand and receive the same fees, costs and expenses therein as are provided by law to be paid to a justice of the peace of a town, and shall keep an account thereof and of fines and penalties paid to him. All such costs, fees and expenses and all penalties or other money so paid to him in a proceeding for or on account of a violation of an ordinance of the village during any calendar month shall be paid to the village treasurer before the first regular meeting of the board of trustees in the next succeeding month. All other fees, costs, expenses, fines or penalties so collected shall be paid over and accounted for in the same manner as moneys collected by a justice of the peace in like cases. He shall, prior to such meeting in each month, file with the village clerk a complete, detailed and verified statement of all moneys payable to the village treasurer which were received by him during the last preceding month, with the written receipt of the treasurer therefor attached thereto. No order for the salary of such police justice shall be drawn until such monthly statement and receipt are filed with the clerk. He shall keep an account of all fees in criminal actions and proceedings which would be payable to him if he were not paid a salary, and which are a town or county charge, and shall present claims for such fees against the town or county to which chargeable. All orders or warrants for such claims shall be made payable to the treasurer of the village, who shall collect the amount thereof.

This section was derived from Village Law, L. 1897, ch. 414, § 185.

Taking unlawful fees: see PENAL LAW, § 1826.

Fees in civil proceedings.— It was ruled in 9 St. Dept. Rep. 514, that as section 186 (infra) confers on police justices in villages concurrent jurisdiction with justices of the peace in civil cases, a police justice in receipt of a salary is entitled to retain for his own use the same fees in civil cases that a justice of the peace is entitled to retain.

Proof as to salaried office.— Where upon certiorari to review proceedings of a town board of audit in rejecting claims by a police justice and village policeman against the town for fees chargeable to the town, the petition alleges that the said village officials receive a salary for their services which is paid by the village, this allegation, if not denied directly or indirectly in the return, must be regarded as admitted. People v. Sutphin, (1901) 166 N. Y. 163, 59 N. E. 770, modifying order 53 App. Div. 613, 66 N. Y. S. 49.

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§ 186. Civil jurisdiction of police justice. The police justice shall have the same jurisdiction as a justice of the peace of a town in civil action.[1] The town clerk of each town in which a village or any part thereof is situated shall furnish to such police justice jury lists in the same manner as to the justices of the peace of his town.

This section was derived from Village Law, L. 1897, ch. 414, § 186. It was amended by L. 1911, ch. 501, § 1. The amendment is shown in the footnote.

Jurisdiction of justices' courts: see Code Civ. Pro., § 2861 et seq.

Operation of section.— The present section relates only to the nature of the jurisdiction of the police justice and does not extend his territorial jurisdiction, which is limited within the boundary of the village in which he is elected. Nassau Garage v. Dorn, (1916) 158 N. Y. S. 534; Op. Atty.-Gen. (1908) 527.

Jurisdiction where village extends through more than one town.— Where a village extends through several towns the jurisdiction of the village police justice is coextensive with the parts of the several towns included within the territorial limits of the village and is not limited to the town in which he resides. Op. Atty.-Gen. (1912) 108.

Authority to solemnize marriage.— It was ruled in Op. Atty.-Gen. (1912) 29, that a village police justice had no right to solemnize a marriage. Compare 9 St. Dept. Rep. 514.

§ 187. Acting police justice. The board of trustees of a village in which the office of police justice is established shall designate a justice of the peace residing in the village, if any, and otherwise, a justice of the peace residing in the town in which the village or a part thereof is situated, as acting police justice of the village. During the absence or inability of the police justice to perform the duties of his office, the acting police justice has all the powers and is subject to all the liabilities of a police justice within the village.

This section was derived from Village Law, L. 1897, ch. 414, § 187.

Acting justice for interim between terms.— Where the term of office of a police justice expires previous to the day on which his successor takes office he cannot act as police justice pending the qualification and installation of his successor. In such a case the village trustees may appoint an acting police justice for the interim. Op. Atty-Gen. (1897) 232.

§ 188. Village policemen. The president, each trustee and the street commissioner are ex officio members of the police department, and have all the powers conferred upon policemen by this article. The board of trustees, or if a municipal board continued by section sixty-six now acts as police commissioners, such board may appoint and fix the terms, not extending beyond the current official year, of one or more village policemen, one of whom may be designated as chief of police.

This section was derived from Village Law, L. 1897, ch. 414, § 188.

Village clerk as special policeman.— It has been ruled that there is no incompatibility in the duties of the office of village clerk and that of special village policeman, and that both offices may be held by the same person. Op. Atty-Gen. (1897) 168.

[1] "to recover a penalty or forfeiture to the village" omitted.

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Cited.— This section was cited in Op. Atty.-Gen (1906) 612, in connection with the question of the eligibility of a person interested in the sale or manufacture of liquor to hold the office of president of a village. See **supra**, § 80 note.

§ 188-a. Police department. The board of trustees of a village in a county adjoining a city of the first class, or if the municipal board continued by section sixty-six acts as police commissioners, such board may, instead of appointing policemen for fixed terms pursuant to section one hundred and eighty-eight, by resolution, establish a police department in such village, and appoint a chief of police and such number of policemen as may be needed, and fix their compensation. No person shall be eligible to membership in such police force who shall not be a citizen of the United States, who shall have been convicted of felony or who shall be unable to read or write understandingly the English language. No person shall be appointed a member of such police force who is over the age of forty-five years, nor continue to act as such after reaching the age of sixty-five years; provided, however, that village policemen who are over the age of forty-five years and under the age of sixty-five years at the time of the organization of such police department shall be eligible for appointment in such department. Except as provided by this section a member of such police force shall continue in office unless suspended or dismissed. A member found guilty upon charges, after notice and an opportunity to be heard in his defense, of neglect or dereliction in the performance of official duty, or violation of rules and regulations, or disobedience of orders, or absence without leave, or other breach of discipline, or incompetency to perform official duty, or an act or delinquency seriously affecting his general character or fitness for office, may be punished by the board of trustees or other municipal board having jurisdiction, by reprimand, forfeiture and the withholding of salary or compensation for a specified time not exceeding twenty days, suspension from duty for a specified time not exceeding twenty days, and the withholding of salary or compensation during such suspension, or by dismissal from the force. The dismissal of a member of the force, however, shall be subject to review by certiorari.

New. Added by L. 1915, ch. 479, § 1. It was amended by L. 1916, ch. 145, § 1, by which the proviso contained in the third sentence was added. It was further amended by L. 1917, ch. 359, § 1, by which the words "or who shall be unable to read or write understandingly the English language" were added to the second sentence.

Organization and regulation of police in villages: see Code Crim, Pro., § 100.

§ 189. Powers and duties of policemen. The policemen so appointed shall have all the powers and be subject to the duties and liabilities of constables of towns in serving process in any

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civil action or proceeding. Said policemen shall have power to execute any warrant or process issued by justices of the peace of the county or counties in which such village is situated.

This section was derived from Village Law, L. 1897, ch. 414, § 189, as amended by L. 1907, ch. 471, § 1.

Arrest of disorderly persons: see infra, § 338.

Certificate to village policemen: see GENERAL MUNICIPAL LAW, § 206.

Duty of person commanded to aid officer: see Code Crim. Pro., § 104.

Force to preserve the peace or attend any public meeting: see Code Crim. Pro., § 101.

Free transportation and use of telegraph lines and telephones: see GENERAL MUNICIPAL LAW, § 206.

Magistrates and officers to command rioters to disperse: see Code Crim. Pro., § 106 et seq.

Powers of sheriff or other officer in overcoming resistance: see Code Crim. Pro., § 102.

Power of policeman outside village limits.—A village policeman is merely a local officer and has no right to make an arrest as a peace officer, without a warrant, outside of the village limits. Nor has he authority to carry a revolver outside the village limits, except when he is executing criminal process pursuant to the present section. Op. Atty.-Gen. (1912) 534.

Duty to serve process issued by village police justice.— Process issued by the village police justice should be served by the village policeman, and the village cannot be charged with the fees of a town constable for serving such process, though he does so in pursuance of a resolution of the village trustees. Gorr v. Port Jervis, (1901) 57 App. Div. 122, 68 N. Y. S. 15.

§ 190. Fees, salaries and expenses of policemen. The board of trustees may determine that each village policeman shall be paid a salary instead of fees and may fix the amount thereof. A village policeman shall receive the same fees as constables of towns for similar services, to be paid in like manner, except that his fees for services in proceedings on account of a violation of a village ordinance shall be paid by the village. If a village policeman receives a salary, all fees collected or received by him belong to the village and he must account therefor and credit the same upon his salary, except those fees received for the execution of all process, civil or criminal, outside of the corporate limits of the said village. A village policeman shall not receive any present or reward for his services other than his fees or salary, except by the consent of the board of trustees. Every village policeman who receives a salary from the village for his services shall keep a book in which shall be entered all services performed by him which are a town or county charge, and shall present claims therefor against the town or county to which chargeable. All orders or warrants for such claims, except those hereinabove specified, shall be made payable to the village treasurer, who shall collect the amount thereof.

This section was derived from Village Law, L. 1897, ch. 414, § 190, as amended by L. 1907, ch. 471, § 1.

Taking unlawful fees: see PENAL LAW, § 1826.

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ARTICLE 8

Fire Department

Section 200. General powers of the board of fire commissioners.
201. Ordinances.
202. Organization of companies.
203. Incorporation of fire department.
204. Election of company officers and delegates.
205. Chief engineer and assistant engineers.
206. Council of fire department.
207. Meetings of fire department.
208. Duties of chief engineer and assistants.
209. General exemptions of firemen.
210. Annual report of the fire commissioners.

§ 200. General powers of the board of fire commissioners. The board of fire commissioners of a village,

1. Has the care, custody and control of all property belonging to the fire department.

2. May purchase fire engines, hose, hose carts, horses, tools, implements and apparatus suitable and necessary to prevent and extinguish fires within the village, and keep the same in good condition and repair.

3. May erect and maintain suitable and necessary buildings for the fire department.

4. May construct and maintain reservoirs and cisterns and supply them with water for use at fires.

5. May adopt rules for the admission, suspension, removal and discipline of the members, officers and employees of the fire department, may prescribe their powers and duties, and fix their compensation.

6. Has the control and supervision of the members, officers and employees of the department, may direct their conduct at fires and prescribe methods for extinguishing fires.

7. May appoint persons other than members or officers of the department to take charge of the property of the department, and may fix their compensation.

8. May, in villages of the first or second class, appoint not more than twenty duty or "call men," and fix their duties and compensation.

9. May inquire into the cause and origin of fires occurring in the village, and may take testimony in relation thereto.

10. May, by resolution, authorize residents of described territory outside of the village to become members of the fire department of the village, with all the powers, duties and privileges of

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such members, if such territory is afforded fire protection by the fire department of the village.

This section was derived from Village Law, L. 1897, ch. 414, § 200. It was amended by L. 1916, chs. 248 and 316. By this amendment subdivision 10 was added, the reading of the statutes last cited being identical. Chapter 248 taking effect April 18, 1916, and chapter 316 taking effect April 26, 1916.

False alarms of fire: see PENAL LAW, § 1424.

Injury to fire hydrant: see PENAL LAW, § 1423, subd. 10.

Interference with fire-alarm system or apparatus: see PENAL LAW, § 1424.

Obstructing attempts to extinguish fires: see PENAL LAW, § 1901.

Provisions applicable to a village embracing the entire territory of a town: see infra, § 322 et seq.

Provisions applicable to certain villages: see infra, § 310 et seq.

Refusal to extinguish fires: see PENAL LAW, § 1900.

Town fire companies: see TOWN LAW, § 310 et seq.

Selection of chief engineer.—This section does not put upon the board of fire commissioners the duty of choosing the engineers of the department. "There is no mention whatever in any of the nine subdivisions of section 200 of the appointment or election of the chief engineer and assistants, or of the appointment or election of any other officer of the department. That is reserved for section 205, which expressly provides for the election of a chief engineer by the board of fire commissioners. So that by giving the council of the fire department the same powers that are conferred upon boards of fire commissioners by section 200 of the Village Law the right to choose a chief engineer is not included." People v. Carpenter, (1912) 77 Misc. 244, 135 N. Y. S. 593.

Cited.—This section was cited in Op. Atty.-Gen. (1907) 555, in connection with the ruling that money in a general village fund may be used for fire purposes.

§ 201. Ordinances. The board of fire commissioners may adopt ordinances for the following purposes:

1. To protect and preserve the property and apparatus of the department.

2. To prevent danger from fires and to protect property exposed to destruction or injury by fire.

3. To provide for pulling down, blowing up and the removal of buildings and property to arrest the progress of fires or extinguish the same.

The board may enforce observance of such ordinances by the imposition of penalties.

This section was derived from Village Law, L. 1897, ch. 414, § 201.

False alarm of fire: see PENAL LAW, § 1424.

Injury to fire hydrant: see PENAL LAW, § 1423, subd. 10.

Interference with fire alarm system or apparatus: see PENAL LAW, § 1424.

Obstructing attempts to extinguish fires: see PENAL LAW, § 1901.

Refusal to extinguish fires: see PENAL LAW, § 1900.

§ 202. Organization of companies. The board of fire commissioners may organize and maintain fire, hose, protective, and hook and ladder companies, whenever in its judgment the public interests require, by appointing a sufficient number of suitable persons as members thereof, respectively, not exceeding sixty to each fire company, sixty-five to each hook and ladder company and thirty to each hose company or protective company. In villages

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having a population of eighteen hundred or over, hose companies may have a membership of not exceeding fifty members. Vacancies shall be filled by the board of fire commissioners upon nomination by the company. No new appointment shall be made to a company, unless the number of members thereof shall be less than the number hereby limited. The board of fire commissioners may, by resolution, consent to the incorporation of any of the companies so organized by them, or may consent to the incorporation or the organization without incorporation of as many companies voluntarily organized in said village as may be deemed necessary.

This section was derived from Village Law, L. 1897, ch. 414, § 202, as amended by L. 1905, ch. 220, § 1.

Fire corporations generally: see MEMBERSHIP CORPORATIONS LAW, § 100 et seq.

Vacancies generally: see PUBLIC OFFICERS LAW, § 30.

Unincorporated fire company.—The attorney-general has said that "there might exist an unincorporated fire company which, although a branch of the incorporated fire department provided for by the Village Law, would itself be unincorporated. Such an association, like any other unincorporated association, might hold property, real and personal, in the name of its individual members, but it would be somewhat difficult, in case of the death or removal of one of its members, to keep the property intact. Where, therefore, it is proposed to hold property to any considerable amount, it has been found desirable to form corporations." Op. Atty.-Gen. (1911) 365, 366.

§ 203. Incorporation of fire department. The members of all the fire, hose, protective and hook and ladder companies of a village, organized and maintained in pursuance of law, constitute a corporation by the name of the "fire department of ——." The term, fire department of a village, as used in this chapter, refers to such a corporation.

This section was derived from Village Law, L. 1897, ch. 414, § 203.

Devises and bequests to incorporated fire companies: see MEMBERSHIP CORPORATIONS LAW, §§ 102, 103.

Exemption of real property of an incorporated association of volunteer firemen from taxation: see TAX LAW, § 4, subd. 8.

General provisions relating to incorporation: see GENERAL CORPORATION LAW, § 4 et seq.

Grant of general corporate powers: see GENERAL CORPORATION LAW, § 11.

Incorporation of fire corporations: see MEMBERSHIP CORPORATIONS LAW, § 100.

Purchase, sale, mortgage and lease of real property: see MEMBERSHIP CORPORATIONS LAW, § 13.

Cited.—This section was cited in Hammond v. Fulton, (1917) 176 App. Div. 343, 163 N. Y. S. 51, reversed (1917) 220 N. Y. 337, in connection with the death of a "call" fireman in the performance of his duties.

§ 204. Election of company officers and delegates. Each of the several companies whose members constitute the fire department of the village shall hold an annual meeting on the first Tuesday in April in each year. At such meeting the members of each company shall elect by ballot from their own number a [1]captain and an assistant [1]captain, who must be approved by the

[1] "captain" in place of "foreman."

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board of fire commissioners, [2]one warden and [3]one delegate to the general convention of the fire department. The terms of office of the [4] captain and assistant captain shall be one year, the wardens two years, and the delegates three years, respectively, and any vacancies occurring in any such offices shall be filled by election in like manner. [5]At the first annual meeting after this act takes effect two wardens and three delegates shall be elected, the wardens to serve for one and two years, respectively, and the delegates for one, two and three years, respectively.

This section was derived from Village Law, L. 1897, ch. 414, § 204. It was amended by L. 1916, ch. 25, § 1. The amendments are shown in the footnotes.

Corporate elections generally: see GENERAL CORPORATION LAW, § 23 et seq.

§ 205. Chief engineer and assistant engineers. The chief engineer and the first and second assistant engineers of the fire department shall each be a member thereof and an elector of the village. The delegates elected to the general convention of the fire department shall meet at the council room thereof on the Thursday following the first Tuesday in April and nominate a person for each of such offices; but the fire commissioners of any village may adopt a rule requiring all such nominations to be made on that day by a vote of the duly qualified members of the department, in which case the meeting of the delegates in general convention, as provided for in this section, shall be dispensed with. The person acting as secretary of such convention shall forthwith file in the office of the village clerk a certificate of such nominations. The board of fire commissioners at its next meeting shall consider the nominations and appoint such persons as it may approve to the offices to which they are respectively nominated. If a nomination is not approved the board shall appoint a qualified person to such office.

This section was derived from Village Law, L. 1897, ch. 414, § 205, as amended by L. 1898, ch. 145, § 1.

Application of Civil Service Law.—The provisions of section 22 of the Civil Service Law for the protection of those who shall have served the time required by law in the volunteer fire department of any city, town or village in the state are to be taken as intending service for five consecutive years. Such provisions are not intended to protect an engineer of a steam fire engine employed by the board of trustees of a village, where the employment or position is not a public office, nor a position created by statute, but is created by the board, and the term of the employment is during the pleasure of the board, and the employee has annually presented to the board a written request for reappointment. Cooper v. Paris, (1911) 73 Misc. 244, 130 N. Y. S. 1043.

[2] "one" in place of "two."

[3] "one delegate" in place of "three delegates."

[4] "captain and assistant captain shall be one year, the wardens two years, and the delegates three years" in place of "foreman, assistant foreman and wardens shall be one year."

[5] Remainder of section new.

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Construction of early statute.— It was held in People v. Hayes, (1897) 20 App. Div. 36, 46 N. Y. S. 546, that under section 3 of chapter 244 of the Laws of 1887, providing that the convention of delegates of the fire companies "shall select separately by ballot suitable persons, electors of such village, for chief engineer and first and second assistant engineers, and the individuals receiving the greatest number of votes for those several offices shall be recommended to the board of trustees of said village for their appointment," and section 4 providing that "the board of trustees of such village upon such recommendation shall appoint a chief engineer and two assistant engineers, who shall be electors of said village, and who shall hold their offices during the pleasure of said board," before the duty of appointing a chief engineer and assistants was imposed upon the board of trustees, it was necessary for the convention of the fire companies to recommend to the board suitable persons for such offices. It was also held that the convention could recommend only the individuals who received the greatest number of votes for their several offices, and where there was a tie vote, there could be no valid recommendation.

§ 206. Council of fire department. In a village in which separate fire commissioners are not appointed, the chief engineer, the assistant engineers and the wardens of the several companies constitute the council of the fire department. The council shall meet on the third Tuesday in April in each year and choose from its own number a secretary, a treasurer and a collector of the fire department, who shall hold their respective offices for one year unless sooner removed by the council. A vacancy in the office of secretary, treasurer or collector shall be filled by the council at its next meeting for the balance of the unexpired term. Such council shall have all the powers and be subject to all the liabilities and perform all the duties of a separate board of fire commissioners, as prescribed in section two hundred of this chapter, except subdivisions two, three, four and eight and the fixing of compensation under subdivisions five and seven of such section, and as to the provisions of such subdivisions such council shall only recommend to the board of trustees of the village. A majority of the members of such council constitute a quorum, and may make and prescribe by-laws for the proper management of the affairs and the disposition of the funds of the fire department, may call meetings of the members, and designate one or more days in each year for public exercise, inspection and review.

This section was derived from Village Law, L. 1897, ch. 414, § 206, as amended by L. 1904, ch. 645, § 1.

Quorum and majority: see GENERAL CONSTRUCTION LAW, § 41.

Vacancies generally: see PUBLIC OFFICERS LAW, § 30.

Construction in connection with section 89.— It has been held that under the provisions of section 89, subdivision 19, providing that the board of trustees of a village "has all the powers and is subject to all the liabilities and must perform all the duties of a separate board of fire . . . commissioners, if the village has no such separate board," the power to appoint a chief engineer of the fire department of a village which has no board of fire commissioners, rests with the board of trustees and not with the council of the fire department, under section 206. People v. Carpenter, (1912) 77 Misc. 244, 135 N. Y. S. 593. But the attorney-general has ruled that upon the principles of statutory construction it seems to have been the intention of the legislature to qualify subdivision 19 of section 89 by the provisions of

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this section, and to that extent to eliminate from section 89 all that relates to a separate board of fire commissioners, conferring upon the council of the fire department the duties and powers of a board of fire commissioners; and that this section should predominate in all cases in villages organized under the Village Law, where there is no separate board of fire commissioners. Op. Atty.-Gen. (1898) 211.

Disqualification to vote by nonpayment of fines.—The attorney-general has ruled that if by-laws have been duly adopted by a fire company prescribing fines for nonattendance at company meetings, and that a member may not vote until he shall have paid such fines and placed himself in good standing, the chief engineer, as president of the fire department council, has the authority to prevent from voting a member who has not paid such fines. Op. Atty.-Gen. (1911) 263.

Possession of prize trophy.— It was held in Matter of Seaman, (1910) 66 Misc. 381, 121 N. Y. S. 359, that where a resident of a town gave its fire department a silver trophy to be contested for by any individual company and to become the permanent property of the company winning it three times; and where one of the fire companies of the town won the trophy at two contests in successive years held under the direction of the fire council, and the third year the council arranged no contest, for reasons they deemed sufficient, but the successful company arranged for a contest and held it without the intervention of the fire council, observing, however, the regulations of the department, the success of the company holding the trophy in the latter contest did not entitle it to the permanent ownership of the trophy, which could be determined only in contests held under the authority of the fire council; but, the trophy having been turned over by the fire council to the company that had succeeded in the two contests had under its authority, the latter company should continue to hold the trophy until its third victory gave it permanent ownership or some other company defeated it in the yearly contest.

§ 207. Meetings of fire department. The members of the several companies constituting the fire department shall hold a general meeting at the council room, or at such other place as the council may direct, on the first Friday following the first Tuesday in April of each year, at seven o'clock in the afternoon, to hear the annual report of the secretary and treasurer, and to transact any other proper business of the fire department. If a meeting or election of the fire department shall not be held on the day fixed by this article therefor the corporation shall not on that account be dissolved, but the meeting or election may be held on a subsequent day in accordance with its by-laws.

This section was derived from Village Law, L. 1897, ch. 414, § 207.

§ 208. Duties of chief engineer and assistants. The chief engineer shall be president of the council and of the meetings of the fire department. He shall, under the direction of a separate board of fire commissioners, if any, have exclusive control of the members at all fires, inspections and reviews, the supervision of the engines, hose and other apparatus owned by the village for the prevention or extinguishment of fires, of all property owned by the fire department, and of all officers and employees thereof elected or employed by the council or by a separate board of fire commissioners, if any. He shall, whenever required by the board of fire commissioners, report to the board the condition of the prop-

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erty of the department and such other information respecting the department as may be required. He shall hold the members, officers and employees of the department strictly to account for neglect of duty, and may, in a village in which separate fire commissioners are not appointed, suspend or discharge them at any time, subject to the approval of two-thirds of the members of the council at the next meeting. He shall, upon application, and if authorized by the council, or a separate board of fire commissioners, if any, issue through the secretary of the fire department a certificate of the time of service of a member of the fire department, and shall give to each officer of the department immediately after his election a certificate thereof countersigned by the secretary. In case of the inability or absence of the chief engineer, the first assistant engineer, and in case of the absence or inability of both the chief engineer and first assistant, the second assistant engineer, shall perform the duties and have all the powers of the chief engineer.

This section was derived from Village Law, L. 1897, ch. 414, § 208.
Duty to inspect hotel fire-escapes: see GENERAL BUSINESS LAW, § 205.

§ 209. General exemptions of firemen. A full term of service in a fire department is five successive years. A person who has served in a fire department of a village, after becoming eighteen years of age, shall be entitled to a certificate of such service, signed by the president, and under the corporate seal, or by the chief engineer and the secretary of the fire department, under the seal of the department, or by a majority of the members of the board of fire commissioners in a village in which separate fire commissioners are appointed. Such certificate shall be presumptive evidence of the facts stated therein.

A member of a fire department who removes from the village shall be allowed, as part of a full term, the time he has served continuously as fireman therein, if, within three months thereafter, he becomes a member of the fire department of another village or city; and, upon completing a full term, shall be entitled to all the privileges and exemptions thereby secured to firemen.

This section was derived from Village Law, L. 1897, ch. 414, § 209.
Exemption of firemen from jury duty: see JUDICIARY LAW, §§ 546, 635, 720. *From military duty:* see MILITARY LAW, § 1. *From assessment for labor on highways:* see HIGHWAY LAW, § 79. *From taxation:* see supra, §§ 103, 132.
Firemen moving from one city to another: see GENERAL CITY LAW, § 15.
Firemen serving in one or more fire departments: see GENERAL MUNICIPAL LAW, § 200-a.
Free transportation: see GENERAL MUNICIPAL LAW, § 206.
Free use of telegraph and telephone lines: see GENERAL MUNICIPAL LAW, § 206.
Issuance of certificate to exempt volunteer firemen: see GENERAL MUNICIPAL LAW, § 202.
Limitation on removal from office of volunteer firemen: see CIVIL SERVICE LAW, § 22.

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Payment to representatives of deceased volunteer firemen: see GENERAL MUNICIPAL LAW, § 205.

Qualifications of exempt volunteer firemen: see GENERAL MUNICIPAL LAW, § 200.

Rights and privileges of exempt volunteer firemen: see GENERAL MUNICIPAL LAW, § 201.

Term of service: see GENERAL CITY LAW, § 16.

Term "majority" defined: see GENERAL CONSTRUCTION LAW, § 41.

Necessity of five years' service.—To entitle a fireman to a certificate entitling him to exemption he must have served the full time of five years. Op. Atty.-Gen. (1903) 237; Op. Atty.-Gen. (1902) 198.

Burden of proof.—The burden of showing that a person is an exempt volunteer fireman is upon the one who claims an exemption or preference by reason thereof. People v. Hayes, (1909) 135 App. Div. 19, 119 N. Y. S. 808.

Conclusiveness of certificate.—A board of village trustees which has granted an exempt fireman's certificate is chargeable with knowledge that the grantee is an exempt volunteer fireman, and it cannot challenge the sufficiency of such a certificate as proof of that fact. People v. Atchinson, (1910) 68 Misc. 115, 123 N. Y. S. 577.

Membership in fire department.—Where the facts show that one claiming membership in a fire department and exemption by reason thereof never became a member in good faith, and never performed any fire duty, he is not entitled to the exemption from removal under the Civil Service Law upon the ground of service in a volunteer fire department. People v. Hayes, (1909) 135 App. Div. 19, 119 N. Y. S. 808; People v. Harburger, (1909) 132 App. Div. 260, 116 N. Y. S. 994.

Necessity of formal organization of fire department.—The protection extended to volunteer firemen is confined to those who have belonged to a volunteer fire department or company organized under the laws of the state, and not to those who have associated themselves together informally, without any responsibility to the state or its municipalities, and over whom the state has no authority or control People v. Butler, (1908) 124 App. Div. 148, 108 N. Y. S. 848. The same ruling was made in People v. Beach, (1911) 143 App. Div. 712, 128 N. Y. S. 412, but on appeal (1911) 203 N. Y. 620, 97 N. E. 39, the order of the Appellate Division was reversed on the ground that the fire company in question, though voluntary, had long been recognized by the municipal authorities as constituting a part of its regular fire department.

Exemption from taxation.—The issuance of a certificate of five years' service as a volunteer fireman is not enough of itself to entitle the holder thereof to exemption from taxation, even in a village. Such exemption can be had only in case of the adoption of a proposition therefor by the village. The charter of Greater New York contains no provision exempting from taxation the property of a village volunteer fireman who holds a certificate of service for five years, and there is no provision in any other statute that would give to the holder of such certificate exemption from taxation in Greater New York. Op. Atty.-Gen. (1903) 237.

As to exemption of village firemen from taxation, see supra, § 132.

Application of General Municipal Law.—The attorney-general has ruled that an examination of this section, in connection with sections 200–205 of the General Municipal Law, shows that both statutes undertake to regulate the same subject and purport to make provision for exemptions of volunteer firemen and to specify the terms and conditions upon which such exemptions shall be granted and the certificates which shall be issued therefor. A provision touching the same subject may also be found in section 15 of the General City Law. The provisions in the General Municipal Law are much more explicit and specific in detail as to the form of the certificate to be granted, and make express provisions in the case where a volunteer fire department has been disbanded and the fire department, of which it was a part, superseded by a paid department. Therefore the provisions of sections 200–205 of the General Municipal Law, in relation to exempt firemen and certificates to be issued for their service, are controlling upon the subject and this section is without statutory force. Op. Atty.-Gen. (1911) 322.

Compensation for death of "call" fireman.— It was held in Hammon v. Fulton, (1917) 220 N. Y. 337, reversing 176 App. Div. 343, 163 N. Y. S. 51,

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that the widow of a "call" fireman of the city of Fulton was entitled to recover from the city the sum of $2,500 under section 205 of the General Municipal Law, as amended, or under section 119 of the city charter, where the husband was killed in the performance of his duties.

§ 210. Annual report of the fire commissioners. Between the first and fourth day of March in each year, the board of fire commissioners shall file with the village clerk a report containing a statement of the following facts:

1. The amount of money on hand at the beginning of the preceding fiscal year, and the receipts from all sources during such year.

2. An itemized statement of the amount paid out during such year, and the balance on hand.

3. The outstanding indebtedness of the department, either bonded or otherwise, separately stated.

4. A statement of the principal or interest which will become due during the current fiscal year on bonds or certificates of indebtedness.

5. The improvements made during such preceding year, and the general condition of the property of the fire department.

6. Such other facts as the board deems important for the interest of the village, together with such recommendations concerning the department as may be deemed proper.

This section was derived from Village Law, L. 1897, ch. 414, § 210.

Auditing and paying fraudulent claims: see PENAL LAW, § 1863.

Obtaining proceeds of fraudulent audit or payment: see PENAL LAW, § 1864.

Misappropriation and falsification of accounts by public officers: see PENAL LAW, § 1865.

Fraudulently presenting bills or claims to public officers for payment: see PENAL LAW, § 1872.

Duty of trustees, directors or managers of fire corporations to file reports: see MEMBERSHIP CORPORATIONS LAW, § 104.

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ARTICLE 9

WATER

Section 220. Contracts for water supply.
221. Election for water-works.
222. Acquisition of existing system.
223. Establishment of water-works.
224. Supervision and extension of system.
224-a. Audit of accounts.
225. Acquisition of additional water rights.
226. Water pipes in highways outside of village.
227. Connections with mains.
228. Ordinances.
229. Establishment of water rents.
230. Assessment for fire protection.
231. Reservoirs.
232. Supplying water outside of corporate limits.
233. Outside extension of mains.
234. Contracts with other municipalities.
235. Annual report of water commissioners.

§ 220. Contracts for water supply. The board of water commissioners may contract, in the name of the village, with an individual or corporation for supplying water to the village for extinguishing fires or for other public purposes; but such contract shall not be made for a longer period than five years, nor at an expense for each fiscal year exceeding two and a half mills on every dollar of the taxable property of the village as appears on the last preceding village assessment-roll, unless authorized at a village election. The amount of such contract shall be paid in annual instalments, commencing with the date of the contract.

This section was derived from Village Law, L. 1897, ch. 414, § 220.

Provisions applicable to certain villages: see infra, § 310 et seq.

Provisions applicable to a village embracing the entire territory of a town: see infra, § 322 et seq.

Water works corporations generally: see TRANSPORTATION CORPORATIONS LAW, § 80 et seq.

Contracts by water works corporations with municipalities: see TRANSPORTATION CORPORATIONS LAW, § 81.

Limitation on acquisition of water rights in Dutchess, Westchester and Putnam counties: see GENERAL MUNICIPAL LAW, §§ 75, 76.

Contracts for purification of water: see GENERAL MUNICIPAL LAW, § 120.

Provisions of Town Law relating to water: see TOWN LAW, § 270 et seq.

Water supply generally.—The statutes relating to the matter of procuring a water supply for the various communities in the state disclose the wide range of legislation upon this subject. In some cities the water works systems are operated as a part of the general municipal government; in others the powers and liabilities pertaining thereto are imposed upon special officers or boards either with or without distinct corporate powers. This is also true of villages, some of which obtain their water supplies under the

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Village Law, while others are supplied by private water corporations or under special statutes. People v. Winkler, (1911) 203 N. Y. 445, 96 N. E. 928, reversing order 146 App. Div. 314, 130 N. Y. S. 691. But it has never been regarded by the courts as a part of the corporate duty of a municipal corporation to supply its citizens with light, water, fire apparatus, hospitals, or any of those conveniences which to so great an extent improve the sanitary condition of the community and are beneficial to the inhabitants. The state delegates such powers as privileges. It does not impose them as duties, and, while highly beneficial to the communities, they are not regarded as beneficial to the municipality in its corporate character. The power to perform acts or to maintain structures or systems for the supply of water and light is not equivalent to a duty to perform, and no obligation rests upon the municipality in this regard to do the thing it has the power to do and hence the authorities are uniform that the failure to maintain water works systems in municipalities in such a condition that it might be determined as a fact that a fire would have been extinguished if the water supply had been sufficient does not create a cause of action against the municipality in favor of the aggrieved party. Wainwright v. Queens County Water Co., (1894) 78 Hun 146, 28 N. Y. S. 987.

Nature of office and powers of water commissioners.—As a quasi corporate capacity is not essential to the proper conduct of such an office as that of district water commissioner, the courts should not hold that it exists where the legislature has not spoken upon the subject. District water commissioners are not quasi corporations, but only administrative officers with power to make contracts in their official name and capacity, and intrusted with funds to meet them, and as they are not agents of the town or district, they are not personally liable upon their official contracts, and cannot be sued in actions at law. For an alleged breach of a contract made by such commissioners or for a failure to pay any debt incurred by them in their official capacity, the writ of mandamus is, therefore, the only appropriate remedy to compel action on their part, and the writ of certiorari may be invoked where such action is challenged as unlawful. People v. Winkler, (1911) 203 N. Y. 445, 96 N. E. 928, reversing order 146 App. Div. 314, 130 N. Y. S. 691.

"The board of water commissioners is not a subsidiary body appointed or removable by the municipal authorities; they are elected for a stated term, and the legislature intended to create a body charged with the duty to supply an adequate supply of water for the necessities of the village, and it gave them power to do this." Drew v. White Plains, (1913) 157 App. Div. 394, 142 N. Y. S. 577.

Water commissioners are merely agents of the village, and, except as their acts are within the powers conferred upon them as agents, they do not represent it. "The officers of a municipal corporation are agents with a limited power, and cannot bind the corporation by an act or contract beyond their power; and in an action on such a contract the corporation may interpose the plea of ultra vires." Fort Edward v. Fish, (1895) 86 Hun 548, 33 N. Y. S. 784, affirmed (1898) 156 N. Y. 363. It was held in Fleming v. Suspension Bridge, (1883) 92 N. Y. 368, that where the trustees of an incorporated village organized into a board of water commissioners for the purposes and as prescribed by the Act of 1875 (L. 1875, ch. 181), and as such entered into a contract for erecting water works for the village, they acted simply as agents for the village, and the contract was binding upon it, and an action was maintainable against it thereon; and it was immaterial whether the contract was made in the name of the village, or in the names of the trustees as water commissioners, or as a board. See also King v. Randolph, (1898) 28 App. Div. 25, 50 N. Y. S. 902. Where the water commissioners of a village, under the provisions of a statute, are directed to acquire the necessary lands and easements in the name and on behalf of the village, and all the revenues derived from the supply of water are paid to the village, the relation of principal and agent exists between the commissioners and the village. Although in such case it is the duty of a creditor to apply to the commissioners to audit and certify his claim upon their refusal he is not restricted to proceedings by mandamus but can maintain an action against the village. The failure to allege in the complaint that the water commissioners unreasonably refused to audit and certify the claim is ground for demurrer, but upon the trial plaintiff has a right to rely upon the admis-

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sions in the answer which show that the commissioners had repudiated all liability for the demand. Davidson v. White Plains, (1910) 197 N. Y. 266, 90 N. E. 825, reversing 121 App. Div. 287, 105 N. Y. S. 803.

Under the present Village Law the board of water commissioners possesses practically the same powers as it did under earlier statutes, including the power to fix water rates and to collect water rents. Liberty v. Newkirk, (1912) 77 Misc. 214, 137 N. Y. S. 494. As was said in Drew v. White Plains, (1913) 157 App. Div. 394, 142 N. Y. S. 577: "Any power sufficient to authorize a municipality to provide a supply of water or light in the absence of special restrictions carries with it the authority to make a proper contract with an individual or corporation therefor."

Contracts for fire protection.—A village has the power to make contracts for fire protection while it does not have water from an incorporated company for domestic or manufacturing purposes. Canaseraga v. Green, (1903) 88 N. Y. S. 539.

Application to special statute.—The Village Law has no application to water commissioners appointed under a special statute, and their contract for a supply of water is therefore not void because made to cover a greater period than five years. Drew v. White Plains, (1913) 157 App. Div. 394, 142 N. Y. S. 577.

Power of town board to contract for water to be furnished to incorporated village.—After a village has been incorporated within the boundaries of a town, the town board has no authority to enter into a contract with a water company to furnish water for fire purposes, not only to the town but also to the village within its boundaries, nor can it assess the property in the village for its portion of the cost. Villa Park Ass'n v. North Hempstead, (1914) 162 App. Div. 45, 146 N. Y. S. 1047.

Liability of independent water company for taxes.—An incorporated water company authorized to supply water to the inhabitants of a certain town cannot, after said town together with another town has been incorporated under the Village Law and a municipal water works has been established, refuse to pay a portion of the village tax on the ground that it goes to the maintenance of the municipal water works competing with its own, especially where the water supplied by it is inadequate to the needs of the entire village. This is so, although the state water commission in approving the plans for the municipal water works made it a condition that the village acquire the plant of the existing water company which it failed to do owing to the fact that the proposition to acquire the plant was not approved by the voters. Matter of Beauty Spring Water Co., (1909) 134 App. Div. 17, 118 N. Y. S. 659, affirmed (1910) 198 N. Y. 413, 91 N. E. 1101.

Costs against water commissioners.—Where an action is brought against a village to recover a balance alleged to be due upon a contract made by its water commissioners, who were also its trustees, to construct the village water works, a presentation of the claim before action brought to the board of water commissioners and to their treasurer, who had sole control of the water works fund and had made all the payments on the contract, is a sufficient presentation "to the chief fiscal officer of the corporation" within the meaning of section 3245 of the Code of Civil Procedure and entitles the plaintiffs to costs and to an extra allowance on their recovery, it appearing that the treasurer of the village had no power over the water works fund. Hallinan v. Fort Edward, (1899) 26 Misc. 422, 57 N. Y. S. 162.

Evidence establishing implied contract.—It was held in Marlborough Water Works Co. v. Marlborough, (1914) 163 App. Div. 159, 148 N. Y. S. 374, that the evidence was sufficient to establish an implied contract for the payment of the amount claimed for water used, which was conceded to have been the amount paid by the defendant under previous contracts.

It was held in Port Jervis Water Co. v. Port Jervis, (1896) 151 N. Y. 111, 45 N. E. 388, affirming 71 Hun 66, 24 N. Y. S. 497, that where the provision in the charter of a village authorized the trustees to contract for a period of three years with any water company for a supply of water for village uses, before the taxes applicable thereto were levied, and to insert the amount of the annual contract in the tax levy for that year, without submitting the same to a vote of the people, it was to be deemed an exception from the general provisions of the charter forbidding the creation of any debt or liability for which a tax had not been voted and raised, and would warrant the mainte-

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nance of an action against the village to obtain payment for water furnished to it under circumstances from which a contract could be implied to pay what the water was worth, even although no funds had ever been raised therefor.

Clerk.—There is no such officer known to the law as a clerk of the board of water commissioners of a village. Liberty v. Newkirk, (1912) 77 Misc. 214, 137 N. Y. S. 494.

§ 221. Election for water-works. A proposition may be submitted at a village election for the establishment of a system of water-works for supplying the village and its inhabitants with water, or for the acquisition of an existing private system, at an expense in either case not exceeding the sum stated in the proposition.

This section was derived from Village Law, L. 1897, ch. 414, § 221.

Creation of funded debt: see GENERAL MUNICIPAL LAW, § 6.

Issuance of municipal bonds: see GENERAL MUNICIPAL LAW, § 9.

Legalizing municipal bonds or proceedings for issuance: see GENERAL MUNICIPAL LAW, § 22 et seq.

Necessity of distinct and independent proposition.—It is manifest that it was intended that the establishment of a system of water works or the acquisition of an existing private system should be acted upon as a distinct and independent proposition. Therefore village bonds, issued under a single resolution of its trustees providing for borrowing a gross sum not only to purchase, construct and maintain a village water works, but also a village lighting system, are not valid under the Village Law or the General Municipal Law, as the taxpayer, when voting upon the resolution, has no freedom of choice and must vote for or against both propositions when he may be in favor of one and opposed to the other. Hempstead v. Seymour, (1901) 34 Misc. 92, 69 N. Y. S. 462. See also Op. Atty.-Gen. (1902) 263.

Right of women to vote.— Women taxpayers are entitled to vote upon the question of expenditures of money for the purchase of an existing water supply system or for the establishment of a new one. Waverly v. Waverly Water Works Co., (1910) 69 Misc. 373, 125 N. Y. S. 339.

Constitutionality of statute prescribing qualifications of voter.— It was held in Spitzer v. Fulton, (1902) 172 N. Y. 285, 64 N. E. 957, 92 A. S. R. 736, affirming 61 App. Div. 612, 69 N. Y. S. 1146, that the provision of the statute (L. 1898, ch. 269, art. 2, § 5) defining the qualifications of voters in the village of Fulton and requiring that a voter, in order to vote upon a proposition that the village establish a system of water works and issue bonds for that purpose, "must be entitled to vote for an officer, and he or his wife must also be the owner of property in the village, assessed upon the last preceding assessment roll thereof," was not in conflict with section 1 of article 2 of the constitution of the state, defining the qualifications of electors of the state and providing that such electors shall be entitled to vote "for all officers that now are or hereafter may be elective by the people; and upon all questions which may be submitted to the vote of the people;" since such provision must be construed in connection with section 1 of article 12 of the constitution, which provides that "It shall be the duty of the legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent abuses in assessments and in contracting debt by such municipal corporations," and so construed, the first provision is general and relates only to the general governmental affairs of the state; the latter is local and relates to the business or private affairs of the municipalities specified, and the statute is in accordance with the established policy of the state to limit the right of suffrage as to the business or financial affairs of its various villages to the taxpayers of the municipality, and is fully justified by, and not in conflict with, the provisions of the organic law.

Sufficiency of resolution to authorize issuance of bonds.— A resolution, duly adopted by the taxpayers of an incorporated village, pursuant to the

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section that there "shall be raised upon the village" the necessary amount for the purchase of a water works system, is broad enough, under section 128, to authorize the issue of bonds on the credit of the municipality for that purpose. A taxpayer's action to restrain such issue of bonds cannot be maintained on the ground that the words of the resolution were insufficient to authorize it, nor on the ground that the words of the resolution, if sufficient to authorize such issue of bonds, are indefinite in that they also include the power to levy a tax, thus committing the choice of methods to the board of trustees, a power which the electors are not authorized to delegate to the board, and which it is not authorized to exercise. The statute does not authorize, or suggest even, the payment of the purchase price of water works by taxation, but does, in terms, authorize the borrowing of money to pay for them, the language of the resolution being broad enough to cover it; therefore, the trustees did what the taxpayers, by permission of the statute, authorized. New York, etc., Cement Co. v. Davis, (1903) 173 N. Y. 235, 66 N. E. 9, affirming 62 App. Div. 577, 71 N. Y. S. 185. A resolution that a village expend a certain sum in the purchase of an existing water supply system or in the establishment of a new one necessarily contemplates that money shall be raised by tax for the purpose of paying the same and the interest accruing thereon. Waverly v. Waverly Water Works Co., (1910) 69 Misc. 373, 125 N. Y. S. 339.

Review of proposition.— Decisions on appeal of questions raised by the preliminary objections of a water works company in a proceeding by a village to acquire defendant's plant and franchise determining that the resolution which was submitted to the voters of the village was sufficient and legal both in form and substance and that it need not provide for the raising of an annual tax of a sum sufficient to pay the interest and principal as the indebtedness to be created became due and also determining the question of public necessity are res adjudicata upon the hearing of the proceeding upon the merits. The question of the right and power of a village in this state to acquire an existing private water system having been settled by sections 221–223 is not a judicial question; and the state water supply commission has no authority to determine the public necessity for such a course. There remains, however, a question of public necessity in such a case which is a judicial one upon which the court must pass, and, the fact being established, the selection of a source or system is left within reasonable bounds to the municipal authorities. Waverly v. Waverly Water Works Co., (1910) 69 Misc. 373, 125 N. Y. S. 339.

§ 222. Acquisition of existing system. If a proposition be adopted for the acquisition of an existing system of water-works, the board of water commissioners may purchase the same at a price not exceeding the sum specified therein. If the board can not agree with the owners of the system for its purchase, proceedings may be taken to acquire the same by condemnation. If the value thereof fixed by the commissioners appointed in the condemnation proceedings be greater than the sums specified in the proposition, such proceedings must be discontinued, unless the payment of the additional amount be authorized at a village election. If the proceedings be so discontinued the costs and disbursement of the defendants therein are a charge against the village.

This section was derived from Village Law, L. 1897, ch. 414, § 222.

Condemnation proceedings generally: see Code Civ. Pro., § 3357 et seq.

Condemnation of real property by municipality: see GENERAL MUNICIPAL LAW, § 74.

Purchase of water works by town: see TOWN LAW, § 270.

Necessity of acquiring existing system.— It was held in Skaneateles Water Works Co. v. Skaneateles, (1899) 161 N. Y. 154, 55 N. E. 562, 46 L. R. A.

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687, affirming 33 App. Div. 642, 54 N. Y. S. 1115, which was affirmed by 184 U. S. 354, 22 S. Ct. 400, 46 U. S. (L. ed.) 585, that the act of 1875 (L. 1875, ch. 181), authorizing villages to supply themselves with water and permitting the acquisition of the works of any private corporation that may be supplying the municipality with water, did not make it the duty of the water commissioners to acquire the property of the existing corporation or corporations.

"In case of an existing water company the village authorities can take it or let it alone as they like. Their right to construct their own works does not depend in the slightest degree upon their acquiring the works of the company. If, in their judgment, it is not wise or necessary to take the company's property they may proceed and erect their own plant precisely as if the company had never been organized." And the fact that a village has granted to a water works company a franchise to lay pipes in the streets does not deprive the village of its power to erect its own water works system. Colby University v. Canandaigua, (1899) 96 Fed. 449. But where there is no question that a water works company's property sought to be condemned is the best and most appropriate source of supply available to the village, the institution of a proceeding to buy it and pay full value therefor, instead of destroying defendant's property in an attempt to establish another and competing system, is the only fair and reasonable course open to the village. Waverly v. Waverly Water Works Co., (1910) 69 Misc. 373, 125 N. Y. S. 339.

Municipality succeeding to private water company.— When a municipality takes to itself the plant of a private water company and undertakes to distribute water for domestic purposes it occupies exactly the same position as the corporation to whose rights and duties it succeeded in its relation to those with whom it contracts. Bradley v. Union, (1914) 164 App. Div. 565, 150 N. Y. S. 107.

Water company's franchise as exclusive.— In conferring a franchise upon a water company a village, by not expressly parting with it, reserves the right to grant a franchise to another corporation to carry on the same business in the same territory; and, under the authority acquired from the legislature, the municipality has the power to determine whether the right reserved upon the granting of the first franchise shall be exercised by a private corporation or by the municipal corporation. Skaneateles Water Works Co. v. Skaneateles, (1899) 161 N. Y. 154, 55 N. E. 562, 46 L. R. A. 687, affirming 33 App. Div. 642, 54 N. Y. S. 1115, which was affirmed by 184 U. S. 354, 22 S. Ct. 400, 46 U. S. (L. ed.) 585.

Right of independent company to injunction.— It was held in Skaneateles Water Works Co. v. Skaneateles, (1899) 161 N. Y. 154, 55 N. E. 562, 46 L. R. A. 687, affirming 33 App. Div. 642, 54 N. Y. S. 1115, which was affirmed by 184 U. S. 354, 22 S. Ct. 400, 46 U. S. (L. ed.) 585, that under the act of 1875 (L. 1875, ch. 181) the right to determine whether the property of an existing private water works corporation should be taken or not was submitted to the determination of the local authorities; and, hence, the refusal of the village to acquire such property by proceedings *in invitum* did not tend to support the claim of the private corporation for an injunction against the construction and operation of an independent system of water works by the village, the act of 1875 being valid.

Erroneous appraisal.— It was held in Matter of White Plains, (1903) 176 N. Y. 239, 68 N. E. 348, reversing 71 App. Div. 544, 76 N. Y. S. 11, that where the board of water commissioners of a village appointed by statute with power to supply the village with water and to acquire by purchase or condemnation all water, water rights and property necessary therefor, whether owned by individuals or water companies, instituted condemnation proceedings pursuant to such statute to acquire the property of a water works company then supplying the village with water under a contract, and the commissioners appointed in such proceeding instead of appraising such property, including the good will and franchise of the company, at its full value, as provided by the statute, refused to be governed thereby and determined the value of the real property and plant of the company in the manner provided for by the contract, without any award for the franchise rights of the company, such determination and award were illegal and erroneous and must be set aside and a new appraisal ordered before new commissioners to be appointed by the court.

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Inability to agree on price.— A petition in a condemnation proceeding which alleges that the board of trustees of a village submitted to the owners of a water company an offer to buy its property and plant to which no answer was made; that the village has been unable to agree with the owners on a price; that upon two occasions it has requested the owners to make an offer and they have refused; that they have refused to permit an examination of their books to ascertain the extent of the property, and that they have refused and neglected to enter into negotiations for the sale of the property, sufficiently shows the inability of the trustees to agree with the owners upon a price. Waverly v. Waverly Water Co., (1908) 127 App. Div. 440, 111 N. Y. S. 541, affirmed without opinion (1909) 194 N. Y. 545, 87 N. E. 1129.

Void purchase clause.— Where an agreement made by and between a water works company and the authorities of a village, in which the village agrees to take and the water works company agrees to supply water for municipal and fire purposes for a period of five years at a stipulated price, contains a clause providing that the village shall have the right at the end of stipulated periods to purchase the water works by giving the company one year's notice of such intention and paying to said company a valuation to be determined and appraised by a board of arbitrators, chosen as herein provided, such valuation in no case to exceed the cost of the works more than ten per cent, the purchase clause is ultra vires and void, and cannot be enforced by or against the village. Matter of White Plains, (1903) 176 N. Y. 239, 68 N. E. 348, reversing 71 App. Div. 544, 76 N. Y. S. 11.

Application of section 6 of General Municipal Law.— Section 6 of the General Municipal Law, requiring a resolution providing for a funded debt to also provide for raising annually by tax a sum sufficient to pay the interest and principal thereof, does not apply to a proposition submitted to taxpayers to acquire property at a maximum figure, since the extent of the liability therefor cannot be ascertained at the time of the passage of the resolution. Waverly v. Waverly Water Co., (1908) 127 App. Div. 440, 111 N. Y. S. 541, affirmed without opinion (1909) 194 N. Y. 545, 87 N. E. 1129.

Effect of repeal of former statute.— It was held in McCrea v. Champlain, (1898) 35 App. Div. 89, 55 N. Y. S. 125, that where the necessary steps to organize a village system of water works were taken under chapter 181 of the Laws of 1875, and that such act was repealed by the Village Law, still everything that was done by the village prior to July 1, 1897, when the former Village Law took effect, was preserved to it by section 93 of the General Construction Law.

§ 223. Establishment of water-works. If a proposition to establish a system of water-works be adopted, the board of water commissioners shall proceed to construct such system accordingly. It shall prepare a map and plans showing the sources of water supply and a description of the lands, streams, water or water rights to be acquired therefor, and the mode of constructing the proposed water-works and the location thereof, including reservoirs, mains, distributing pipes and hydrants. The water commissioners, their agents, servants and employees, may enter upon any lands for the purpose of preparing such map and plans. The map and plans shall be filed with the village clerk, and a certified copy of such map shall also be filed in the county clerk's office of each county in which any of the lands are situated. The board of water commissioners may acquire, in the name of the village, by purchase, if it can agree with the owners, or otherwise by condemnation, any land, streams, water or water rights necessary for such system. The board may amend the map and plans at any time and such amended map shall be filed in the office of the

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village clerk, and of the county clerk, in like manner as the original. The board may construct such water system by contract or otherwise, and may appoint and at pleasure remove a superintendent to take charge of the system, and may fix his compensation.

This section was derived from Village Law, L. 1897, ch. 414, § 223.

Condemnation of real property by municipality: see GENERAL MUNICIPAL LAW, § 74.

Condemnation proceedings generally: see Code Civ. Pro., § 3357 et seq.

Powers generally.— A village has ample power to acquire any land or an interest in any land which may be necessary for the purpose of supplying the village with water. "It is a general rule that when authority is given to construct and maintain a public improvement all the necessary appurtenances are included." Canandaigua v. Benedict, (1897) 24 App. Div. 348, 48 N. Y. S. 679. This section confers upon water commissioners the power to procure, by purchase or condemnation, a source of supply, and they are not required to submit to the taxpayers the question as to from what source they should procure the water, as they are the sole arbiters of that matter. Lawrence v. Freeland, (1890) 55 Hun 610, 8 N. Y. S. 807, 29 N. Y. St. Rep. 284, appeal dismissed (1891) 129 N. Y. 631, 29 N. E. 1030. "The plan or system to be adopted for furnishing a water supply is wholly within the sound discretion of the board of water commissioners." Canandaigua v. Benedict, (1897) 24 App. Div. 348, 48 N. Y. S. 679.

Condemnation proceedings as distinct from organization of water department.—"After organizing the water department, and determining upon the system, comes the acquisition of lands for the uses of the department; they may be acquired by purchases or condemnation. The condemnation proceedings are separate and distinct proceedings from those organizing the water department and determining what system it will adopt, and whether it will purchase an existing private system or construct one of its own; and such condemnation proceedings are regulated by the laws in existence when they are instituted." McCrea v. Champlain, (1898) 35 App. Div. 89, 55 N. Y. S. 125.

When village entitled to take property.— The mere making and filing of the map does not empower a village to take possession of the premises described therein and erect a water plant thereon; it is only after condemnation proceedings have been had and confirmed by the Supreme Court and the compensation awarded to the landowner has been paid or deposited in court, that the village becomes entitled to take and hold the property. The only entry which the statute authorizes to be made before the condemnation is for the purpose of making surveys and to agree with the owner as to the amount of compensation. St. Johnsville v. Smith, (1906) 184 N. Y. 341, 77 N. E. 617, 6 Ann. Cas. 379, 5 L. R. A. (N. S.) 922, reversing 90 App. Div. 618, 85 N. Y. S. 1149.

Condemnation of corporate property.— Where a village, in need of a water system, has duly voted and bonded itself for one and filed a map and plans therefor, in the proper offices, embracing the only adequate supply existing in the immediate vicinity of itself and of an adjacent village, it cannot, in equity, be prevented from condemning the lands containing the supply upon a disagreement as to price with a corporation organized, under the Transportation Corporations Law, in the other village, as alleged, to supply it with water, and which has bought the said lands, where it appears that the corporation has filed no map of them under the statute, has entered into no valid contract with its village binding it to supply that village with water, has, therefore, in no manner devoted the lands to the public use, and that the corporation was organized, two months after the first named village had filed its maps and plans, in order to thwart it from acquiring the water supply. Fultonville v. Fonda Water Works Co., (1901) 35 Misc. 426, 71 N. Y. S. 1009.

Sufficiency of petition.— A petition, in a proceeding instituted by a board of water commissioners of a village under the condemnation law (Code of Civ. Pro., §§ 3357–3384) to condemn water rights, specifically describes the property sought to be taken with reasonable certainty, as required by sub-

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division 2 of section 3360 of the Code, where it defines it as water to be diverted from a certain river, at a specified point, in sufficient quantity to furnish a stated minimum supply per day for fire and emergency purposes, and when the description is amplified by reference to other portions of the petition. Champlain v. McCrea, (1901) 165 N. Y. 264, 59 N. E. 83, reversing 33 App. Div. 259, 53 N. Y. S. 1096.

"In the name of the village."— The words "in the name of the village," as used in this section, require that condemnation proceedings shall be brought in the name of the village. Matter of Roe, (1908) 59 Misc. 535, 111 N. Y. S. 755.

Meaning of term "establish."— To "establish" means to originate, to found, to institute, to create; not to acquire something that has already been brought into existence. As used in this statute, it contemplates, in part at least, the "constructing" as distinguished from the "purchasing" of "a village improvement," as those words are used in section 128. Hempstead v. Seymour, (1901) 34 Misc. 92, 69 N. Y. S. 462.

Measure of damages.— It was held in St. Johnsville v. Smith, (1906) 184 N. Y. 341, 77 N. E. 617, 6 Ann. Cas. 379, 5 L. R. A. (N. S.) 922, reversing 90 App. Div. 618, 85 N. Y. S. 1149, that where condemnation proceedings were instituted and an award was made to the owner for the land and water rights taken by a village, in which the commissioners of appraisal expressly declared that, in making the award, they made no allowance "for the value of the pipe, the intake basin or the superstructure covering the same nor for any of the work of construction placed upon the appraised premises . . . or for any enhanced value of the premises by reason of such construction having been placed thereon," such award was erroneous, since the landowner was entitled to have the value of the structures placed upon his premises by the village, without authority of law, before the institution of the condemnation proceedings, considered by the commissioner of appraisal in arriving at their determination as to the compensation which ought justly to be made to him by reason of the taking of his lands; that in ascertaining the compensation to be awarded, the measure of such compensation was neither the cost of the improvements nor their value or the value of their use to the village; the true inquiry was how much did the improvements placed upon the property enhance the value of the owner's land.

Trespass by village.— Where the authorities of a village, not only without the consent of the owner, but against his express command and remonstrance, enter upon his lands and construct thereon an intake or reservoir for the village water works and lay pipes for conducting water to and from the reservoir, before instituting condemnation proceedings, such entry and invasion are clearly tortious, the village and its agents being mere trespassers, notwithstanding a survey has been made and a map of the land and water rights proposed to be taken have been filed. St. Johnsville v. Smith, (1906) 184 N. Y. 341, 77 N. E. 617, 6 Ann. Cas. 379, 5 L. R. A. (N. S.) 922, reversing 90 App. Div. 618, 85 N. Y. S. 1149.

Necessity of describing land by metes and bounds.— It is necessary that the petition in condemnation proceedings should describe the land by metes and bounds. If it is a mere easement over certain lands which is sought to be taken, then the land over which the easement is to be had should be described by metes and bounds, especially in a case where it is easy to do so. Certain easements may not be susceptible of a description by metes and bounds, as, for instance, the right to erect and maintain telephone, telegraph, or electric poles, crossings, and wires, but where it is entirely practicable to describe the lands to be taken by metes and bounds it should be done. Matter of Roe, (1908) 59 Misc. 535, 111 N. Y. S. 755.

Action by riparian owner to restrain diversion of stream.— It was held in Penrhyn Slate Co. v. Granville Electric Light, etc., Co., (1905) 181 N. Y. 80, 73 N. E. 566, 2 Ann. Cas. 782, reversing 84 App. Div. 92, 82 N. Y. S. 547, that where it appeared in an action by a riparian owner for a permanent injunction restraining the alleged diversion of a stream that the diversion, if any, was caused by the defendant, a municipality, which fifteen years before had erected a system of water works, and against the construction of which the plaintiffs or their predecessors had made no protest, that the system had been operated ever since, and during all that time they had never attempted

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to assert their alleged rights until the commencement of the action, they were chargeable with such laches as estopped them from maintaining it, and under such circumstances it was not necessary for the trial court to examine the question of the alleged diversion and in the exercise of discretion determine whether the prayer for a perpetual injunction should be granted; that the claim that although the diversion was nominal and the damages slight, unless an injunction was granted the defendant might by lapse of time acquire a prescriptive right to the use of an indefinite quantity of water from the stream, was untenable, since the use could not be enlarged and a prescriptive right founded thereon; and, moreover, if there were any damages, the plaintiffs had an adequate remedy at law.

Exemption from liability.— When an incorporated village avails itself of the permissive authority to construct and maintain a system of water works, conferred by the general acts of the legislature upon all incorporated villages in the state, the grant of power is to be regarded as exclusively for public purposes and as belonging to the corporation in its public, political or municipal character; and for the nonuser or misuser of such power, as in failing to keep the water system in condition to furnish protection from fires, the corporation cannot be made liable at the suit of a citizen. Springfield Fire, etc., Ins. Co. v. Keeseville, (1895) 148 N. Y. 46, 42 N. E. 405, 51 A. S. R. 667, 30 L. R. A. 660, reversing 80 Hun 162, 29 N. Y. S. 1130. See also Wainwright v. Queens County Water Co., (1894) 78 Hun 146, 28 N. Y. S. 987. But where a municipal corporation by the use of soft coal in a newly-erected pumping station creates a nuisance and damages private premises which have been residential property for years it cannot escape liability on the ground that it is exercising a governmental function delegated to it by the state and is not responsible for the misuse of such function. And the fact that the owner is a resident of the municipality and that the property damaged is within its limits does not alter the case; nor that the house in which the owner resides during the period for which he recovers damages is not built until after the pumping station, where the property has been residential for many years. Gordon v. Silver Creek, (1908) 127 App. Div. 888, 112 N. Y. S. 54, affirmed without opinion (1909) 197 N. Y. 509, 90 N. E. 1170.

Contractual relation with the public.— An incorporated village, by availing itself of the permissive power conferred by the general acts to construct water works, does not thereby sustain such an implied contractual relation to the public within its boundaries, with respect to the construction of such public works, as to be responsible for a failure to exercise reasonable care and diligence in respect to its maintenance. Springfield Fire, etc., Ins. Co. v. Keeseville, (1895) 148 N. Y. 46, 42 N. E. 405, 51 A. S. R. 667, 30 L. R. A. 660, reversing 80 Hun 162, 29 N. Y. S. 1130. See in this connection Oaks Mfg. Co. v. New York, (1912) 206 N. Y. 221, 99 N. E. 540, 42 L. R. A. (N. S.) 286, affirming 141 App. Div. 130, 125 N. Y. S. 1050.

Liability of independent water company for taxes.— An incorporated water company authorized to supply water to the inhabitants of a certain town and after said town, together with another town, has been incorporated under the Village Law and a municipal water works has been established, refuses to pay a portion of the village tax on the ground that it goes to the maintenance of the municipal water works competing with its own, especially where the water supplied by it is inadequate to the needs of the entire village. This is so although the state water commission in approving the plans for the municipal water works made it a condition that the village acquire the plant of the existing water company which it failed to do owing to the fact that the proposition to purchase the plant was not approved by the voters. Matter of Beauty Spring Water Co., (1909) 134 App. Div. 17, 118 N. Y. S. 679, affirmed (1910) 198 N. Y. 423, 91 N. E. 1101. Where an incorporated village, after it has granted to an incorporated company the right to operate a water system within a portion only of the village limits, installs and operates a water system of its own, the company cannot maintain an action to restrain the collection of taxes levied against its property, located within the village, for the purpose of paying bonds issued and expenses incurred for the maintenance of the municipal water system. Beauty Spring Water Co. v. Lyons Falls, (1911) 71 Misc. 577, 130 N. Y. S. 845.

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Validity of former statute.— It was held in Skaneateles Water Works Co. v. Skaneateles, (1899) 161 N. Y. 154, 55 N. E. 562, 46 L. R. A. 687, affirming 33 App. Div. 642, 54 N. Y. S. 1115, which was affirmed by 184 U. S. 354, 22 S. Ct. 400, 46 U. S. (L. ed.) 585, that the legislation embodied in the Village Water Act of 1875 (L. 1875, ch. 181) was not in excess of the power of the legislature in so far as it granted to the villages of the state the right to construct and operate water works, notwithstanding the existence in the village of a private corporation engaged in the same business, which had obtained its franchise under the act of 1873 (L. 1873, ch. 737) providing for the creation of water works companies in towns and villages.

Powers of water commissioners under special statute.— It was held in Ft. Edward v. Fish, (1898) 156 N. Y. 363, 50 N. E. 973, affirming 86 Hun 548, 33 N. Y. S. 784, that under an act special to a village the trustees of that village, when acting as the board of water commissioners, acted as agents with limited powers, to whom the principle of strict construction was applicable; and they had no power to make a contract or to pay money, unless it was expressly or impliedly authorized by statute.

Decision of voters as subject to review.— A reading of sections 221, 222 and 223 satisfies the mind at once that "it was the intention of the legislature to place in the hands of the voters of every village the determination of the question whether or not the village should own its own water supply. There is nothing in the statute to indicate that the decision of the voters upon this question is subject to any review whatever. If the voters resolve to purchase an existing system, and the board cannot agree with its owners upon a price, they may proceed to condemn it; and the state water supply commission has no jurisdiction over this question." Waverly v. Waverly Water Works Co., (1910) 69 Misc. 373, 125 N. Y. S. 339.

Cited.— This section was cited in Brockport v. Green, (1902) 39 Misc. 231, 79 N. Y. S. 416, in connection with the establishment of a village sewer system.

§ 224. Supervision and extension of system. A system of water-works acquired or established under this article shall be under the control and supervision of the board of water commissioners. The board shall keep it in repair and may, from time to time, extend the mains or distributing pipes within the village, if the expense thereof in any year in a village of the fourth class shall not exceed five hundred dollars, in a village of the third class one thousand dollars, in a village of the second class fifteen hundred dollars, and in a village of the first class two thousand dollars. If the estimated expense will exceed the above amount, such extension can only be made when authorized by a proposition adopted at an election. A board may, in lieu of extending the mains or distributing pipes, use the amount above specified, or a part thereof, in improving, bettering or perfecting the existing system, such as mains, reservoir, pumping station, filter and lands; [1] but where a village of the second class supplies two or more other villages with water, through a system of distributing pipes, in such villages, owned and controlled by it, the board of water commissioners of such village, may expend for extensions of distributing pipes of its system in any year the sum of fifteen hundred dollars in addition to the foregoing amount.

This section was derived from Village Law, L. 1897, ch. 414, § 224, as amended by L. 1903, ch. 131, § 1. It was amended by L. 1913, ch. 557, § 1. The amendment is shown in the footnote.

[1] Remainder of section new.

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Refusal to extend mains.— Where a village avails itself of the privilege of establishing a water works system under the provisions of the Village Law, it must, as long as any property owner asks it, extend the mains to supply properties that are unsupplied, provided, however, that in villages of the fourth class the cost of all such extensions made in one year does not exceed five hundred dollars. Where, in such a case, the board of water commissioners refuses to extend the mains for the purpose of furnishing a supply of water to a resident, the court may compel the board to perform such duties by mandamus. It is not an answer to an application for a mandamus in such a case that the board has no funds available for the extension, as the board of trustees has the power and is obliged to raise money to pay the expenses of the village, including water supply, and including the proper and legitimate disbursements and expenses of the board of water commissioners. People v. Pierce, (1909) 64 Misc. 627, 119 N. Y. S. 21.

Breach of contract to supply water.— Where the village water works has been purchased from a private corporation which has formerly supplied water to the village and also has supplied water through a branch line to the plaintiff whose premises are outside the village limits, and the village continues the contract by demanding and receiving water rates from the plaintiff, it is bound by its contract and is liable thereon, if it fails to supply water. Bradley v. Union, (1914) 164 App. Div. 565, 150 N. Y. S. 107.

§ 224-a. Audit of accounts. The board of fire, water, light, sewer, park or cemetery commissioners, or board possessing the powers of two or more such boards or other board possessing like powers, whether incorporated pursuant to this act or by special statute, shall, when authorized by ordinance of the board of trustees of the village, as provided in subdivision twenty-one of section eighty-nine of the village law, have the power and authority to audit and direct the payment of all accounts, claims and demands incurred by it and payable out of the funds within its jurisdiction.

New. Added by L. 1917, ch. 150, § 2.

§ 225. Acquisition of additional water rights. A proposition may be submitted at a village election to authorize the board of water commissioners to acquire additional water or water rights, or to construct additional reservoirs, at an expense not exceeding the sum therein stated. If adopted, such improvements shall be made accordingly. For that purpose, the board has the same power and is subject to the same duties and liabilities as in the construction of the original system of water-works.

This section was derived from Village Law, L. 1897, ch. 414, § 225.

§ 226. Water pipes in highways outside of village. The board of water commissioners of a village may cause water pipes to be laid, relaid or repaired under any public highway in a county in which any part of such village is situated, or in an adjoining county, for the purpose of introducing water into and through the village; and shall cause the surface of such highway to be restored to its usual condition; [1] and said board of water commissioners

[1] Remainder of section new.

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may also acquire, take over, and accept from any individual or corporation, gratuitously, or at a nominal consideration any water pipes which have been heretofore laid under any of such public highways in a county in which any part of such village is situated, or in an adjoining county, for the purpose of continuing the supply of water or for the purpose of introducing water into and through such territory, outside of such village, where such water pipes are situated, and supplying the inhabitants thereof with water.

This section was derived from Village Law, L. 1897, ch. 414, § 226. It was amended by L. 1917, ch. 362, § 1. The amendment is shown in the footnote.

Water pipes in and upon highways: see HIGHWAY LAW, § 146.

§ 227. Connections with mains. Supply pipes connecting with mains and used by private owners or occupants shall be laid and kept in repair at their expense. Such pipes can only be connected with the mains by the permission and under the direction of the board of water commissioners. A member of the board or its authorized agent may at any time enter a building or upon premises where water is used from supply pipes, and make necessary examinations.

This section was derived from Village Law, L. 1897, ch. 414, § 227.

Injury to water main or any appurtenance connected therewith: see PENAL LAW, § 1423, subd. 7.

Unlawful interference with water meters, water service pipes and their connections: see PENAL LAW, § 1432.

Common law right to lay pipes in street.— It was not until 1873 that there was a statute authorizing the town authorities to give permission to a resident to lay and maintain water pipes within the bounds of a public highway, for the purpose of supplying a dwelling-house or farm premises with water. Prior to that time there was no statute on the subject; and, under the common law, the owner of property abutting on a public highway who owned the fee thereof had a right to lay water pipes under the surface of the street, for the purpose of carrying water to his dwelling-house or farm property. Wells v. Croton-on-Hudson, (1910) 69 Misc. 97, 124 N. Y. S. 1058.

Abutting owner's rights in streets.— Where the rights of a public in a street of which it does not own the fee depend upon no record of its laying out, dedication or acceptance, but upon user only, and the successors of the ancient owners of the land over which the street is laid have, time out of mind, maintained pipes beneath its surface to carry water to their dwelling-houses and other buildings from a spring on the side of the street, it must be held that the public acquired their rights subject to the maintenance of the pipes by the owners thereof and the right to convey the waters from the spring, and that such pipes do not constitute an encroachment upon or obstruction of the street or interfere with the use of the same by the public, and that the municipality cannot lawfully remove the pipes, though it may acquire them by purchase from the plaintiffs or by condemnation proceedings for the purpose of establishing a municipal system of water supply. Wells v. Croton-on-Hudson, (1910) 69 Misc. 97, 124 N. Y. S. 1058.

§ 228. Ordinances. The board of water commissioners may adopt ordinances, not inconsistent with law, for enforcing the collection of water rents and relating to the use of the water, and

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may enforce observance thereof by cutting off the supply of water, or by the imposition of penalties.

This section was derived from Village Law, L. 1897, ch. 414, § 228.

§ 229. Establishment of water rents. The board of water commissioners shall establish a scale of rents for the use of water, to be called "water rents," and to be paid at such times as the board may prescribe. Such rents shall be a lien on the real property upon which the water is used, [1] and such a lien is prior and superior to every other lien or claim, except the lien of an existing tax, and the board of water commissioners may bring and maintain an action in the name of the village for the foreclosure of such liens for such water rents.

This section was derived from Village Law, L. 1897, ch. 414, § 229. It was amended by L. 1913, ch. 183, § 1. The amendment is shown in the footnote.

Power to fix water rents.— Under the present Village Law the board of water commissioners possesses practically the same powers as it did under earlier statutes, including the power to fix water rates, and to collect water rents. Liberty v. Newkirk, (1912) 77 Misc. 214, 137 N. Y. S. 494; Dasey v. Skinner, (1890) 57 Hun 593, 11 N. Y. S. 821, 33 N. Y. St. Rep. 15.

Term "water rents."— The term "water rents" is to be construed as synonymous with "water rates." Dasey v. Skinner, (1890) 57 Hun 593, 11 N. Y. S. 821, 33 N. Y. St. Rep. 15.

Collection of rents.— The attorney-general has ruled that the board of water commissioners has the power to appoint some person to collect water rents. Op. Atty.-Gen. (1902) 210.

Enforcement of lien.— The statutory lien created by this section may be enforced by a foreclosure action. Op. Atty.-Gen. (1911) 457.

§ 230. Assessment for fire protection. A building and the lot upon which it stands, in or on which water from the water-works is not used, or which does not take water from the water-works corporation, situated within five hundred feet of a hydrant, may be assessed by the board of water commissioners for fire protection. Notice of the proposed assessment, and that the board will meet at a time and place specified therein to hear objections thereto, must be served upon the owner or occupant of the building at least ten days before such meeting. The board shall meet at the time and place specified in the notice, and, after hearing objections, shall complete such assessment. Upon the completion of the assessment, the board shall make a certificate thereof and deliver the same to the village treasurer. The treasurer may receive such assessments for thirty days without fee; after that time an action may be brought to recover the assessment, or a special warrant may be issued therefor, or the amount may be included in the next annual tax levy.

This section was derived from Village Law, L. 1897, ch. 414, § 230, as amended by L. 1902, ch. 591, § 1.

[1] Remainder of section new.

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Constitutionality.— This section has been held unconstitutional as depriving a person of his property without due process of law. Canaseraga v. Green, (1903) 88 N. Y. S. 539, wherein the court said: "If the village authorities or the board of water commissioners have, by a misapprehension of the law, charged more for water for domestic and manufacturing purposes than it is worth for that purpose alone, then they should reduce the amount charged; and, if there is a deficiency in paying the running expenses of the plant, the interest on the bonds, and the bonds as they become due, they have full power to, and should, raise the necessary money by a tax on all the village property. There is no doubt that a person residing upon a street through which a sewer is laid, whose property is already sewered, and does not need a street sewer at all, may be, and should be, taxed equally with the other residents on the street for the expense of building the sewer, or that a man whose property is amply protected against fire by his own private waterworks should be equally assessed for fire protection with his neighbors who have no fire protection of their own. The viciousness of this law is not in the fact that it assesses property that does not take water from the waterworks, situated within 500 feet of a hydrant, but is owing to the fact that it exempts all other property situate in the district, which receives a like and possibly a greater benefit than the property assessed." It was held in Warsaw Water Works Co. v. Warsaw, (1899) 161 N. Y. 176, 55 N. E. 486, modifying 16 App. Div. 502, 44 N. Y. S. 876, that the provisions of chapter 284 of the Laws of 1894, supplementary to the Village Water Act of 1875 (ch. 181), which, by authorizing village water commissioners to lay and assess water rates upon property not using water from the municipal system, disclosed an intent to assist the water commissioners in securing customers from the patrons of an existing private water works company, were invalid, and therefore not enforceable.

Necessity of action by all commissioners.— All the water commissioners must either attend and take part in the deliberation of the water board in laying a tax or must have notice of the meeting. Canaseraga v. Green, (1903) 88 N. Y. S. 539.

Assessment of personal property.— The attorney-general has ruled that the only authority which the water commissioners have to assess for fire protection is the authority to assess real property, viz: "A building and lot upon which it stands;" and therefore it would seem that any attempt by such water commissioners to assess personal property for the payment of the tax for fire protection is in excess of the authority conferred by law. Op. Atty.-Gen. (1904) 213.

§ 231. Reservoirs. In the construction of a storage reservoir connected with the system of water-works, all vegetables or other matter subject to decay shall be removed from the banks thereof between its highest and lowest possible flow line, or such space be covered by gravel or stone to prevent such decay.

This section was derived from Village Law, L. 1897, ch. 414, § 231.
Poisoning well or reservoir of water: see PENAL LAW, § 1760.
Throwing refuse into public waters: see PENAL LAW, § 1759.

§ 232. Supplying water outside of corporate limits. The board of water commissioners may sell to a corporation or individual outside the village the right to make connections with the mains for the purpose of drawing water therefrom, and fix the prices and conditions therefor.

If the mains are or shall be laid in or through another municipal corporation not having a public system of water-works, the board of water commissioners may itself lay additional pipes for the

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purpose of distributing water from such mains, and shall have the same rights in the streets or highways of such other municipal corporation as if the principal system were established therein. The board shall not sell nor permit the use of water under this section if thereby the supply for the village or its inhabitants will be insufficient.

This section was derived from Village Law, L. 1897, ch. 414, § 232.

Breach of contract to supply water to persons outside village limits.— It was held in Bradley v. Union, (1914) 164 App. Div. 565, 150 N. Y. S. 107, that where the village water works had been purchased from a private corporation which had formerly supplied water to the village and also had supplied water through a branch line to the plaintiff whose premises were outside the village limits, and the village continued the contract by demanding and receiving water rates from the plaintiff, it was bound by its contract and liable for a breach thereof, if it failed to supply water.

§ 233. Outside extension of mains. A proposition to extend water mains outside the village may be submitted at an election. Such proposition shall contain a general description of the proposed extension and the estimated expense thereof. If the proposition be adopted, the board of water commissioners shall make the extension accordingly. For that purpose the board shall have the same powers and be subject to the same duties and liabilities as in the construction of the original system of water-works.

This section was derived from Village Law, L. 1897, ch. 414, § 233.

§ 234. Contracts with other municipalities. If the mains are or shall be laid into or through a town, a water supply district thereof, another village, or a fire district in an unincorporated village, the board of water commissioners may contract with the town board on behalf of the town or water supply district, or with the board of trustees of a village or the fire commissioners of a fire district, respectively, to furnish water for the extinguishment of fires or for sanitary or other public purposes. Such contract shall not be for a longer period than ten years, nor shall the amount agreed to be paid in any one year exceed two and a half mills for every dollar of the taxable property in such town, village, or fire or water supply district. The amount payable each year by such contract shall be raised as a part of the expenses of such town, village or fire district, and paid to the treasurer of the village owning such system of water-works.

This section was derived from Village Law, L. 1897, ch. 414, § 234, as amended by L. 1899, ch. 82, § 1.

Contracts for purification of water: see GENERAL MUNICIPAL LAW, § 120.

§ 235. Annual report of water commissioners. Between the first and fourth day of March in each year the board of water commissioners shall file with the village clerk a report containing a statement of the following facts:

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1. The amount of money on hand at the beginning of the preceding fiscal year, and the receipts from all sources during such year.

2. An itemized statement of the amount paid out during such year, and the balance on hand.

3. The outstanding indebtedness of the department, either bonded or otherwise, separately stated.

4. The estimated deficiency in the amount necessary to pay principal or interest or the expenses of the department during the next fiscal year, after applying thereto the probable amount of water rents or other income to be received, and any amount available from the sinking fund.

5. The improvements and extensions made during such preceding year and the general condition of the water-works.

6. Such other facts as the board deems important for the information of the village, together with such recommendations concerning the department as may be deemed proper.

This section was derived from Village Law, L. 1897, ch. 414, § 235.

Auditing and paying fraudulent claims upon a municipal corporation: see PENAL LAW, § 1863.

Obtaining proceeds of fraudulent audit or payment: see PENAL LAW, § 1864.

Misappropriation and falsification of accounts by public officers: see PENAL LAW, § 1865.

Fraudulently presenting bills or claims to public officers for payment: see PENAL LAW, § 1872.

Report of financial condition of incorporated village to comptroller: see GENERAL MUNICIPAL LAW, § 30 et seq.

Prosecution of municipal officers for illegal acts: see GENERAL MUNICIPAL LAW, § 51.

Investigation of expenditures of villages: see GENERAL MUNICIPAL LAW, § 4.

Temporary loans and funded debt: see GENERAL MUNICIPAL LAW, §§ 5, 6, 8.

Cited.—This section was cited in Liberty v. Newkirk, (1912) 77 Misc. 214, 137 N. Y. S. 494, in connection with the question of liability of employees of board of water commissioners for moneys collected. This section was also cited in People v. Pierce, (1909) 64 Misc. 627, 119 N. Y. S. 21, in connection with the question of duty of water commissioners to extend mains.

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ARTICLE 10

Light

Section 240. Contracts for lighting.
241. Election for lighting system.
242. Acquisition of existing private system.
243. Establishment of lighting system.
244. Supervision and extension of system.
245. Ordinances.
246. Establishment of light rents.
247. Annual report of light commissioners.

§ 240. Contracts for lighting. The board of light commissioners may contract, in the name of the village, with an individual or corporation, for lighting the streets, public grounds and public buildings of the village by gas, electricity or other substance; but such contract shall not be made for a longer period than five years, nor at an expense for each fiscal year exceeding two and a half mills on every dollar of taxable property of the village as appears on the last preceding village assessment-roll, unless authorized at a village election. The amount of such contract shall be paid in annual instalments, commencing with the date of the contract.

This section was derived from Village Law, L. 1897, ch. 414, § 240.

Provisions applicable to certain villages: see infra, § 310 et seq.

Provisions applicable to a village embracing the entire territory of a town: see infra, § 322 et seq.

Gas and electric light corporations generally: see TRANSPORTATION CORPORATIONS LAW, § 60 et seq.

Power to grant franchise as affected by Transportation Corporations Law.—The power conferred upon a village to grant a lighting franchise by the present section has not been taken away by the Transportation Corporations Law. Wakefield v. Theresa, (1908) 125 App. Div. 38, 109 N. Y. S. 414.

Renewal of franchise by implication.—Where a village lighting franchise is originally granted for five years, with the privilege of renewal unless the village should elect to purchase the plant, and the village permits the owner of the franchise and his assigns to avail themselves of it from year to year without formal renewal, the village cannot impeach the validity of the franchise on the ground that it has not been formally renewed. Wakefield v. Theresa, (1908) 125 App. Div. 38, 109 N. Y. S. 414.

§ 241. Election for lighting system. A proposition may be submitted at a village election for the establishment of a system for supplying the village and its inhabitants with light by any approved method, or for the acquisition of an existing private system, at an expense in either case not exceeding the sum stated in the proposition.

This section was derived from Village Law, L. 1897, ch. 414, § 241.

Form of ballot on lighting proposition.—A lighting proposition submitted to the voters of a village which authorizes the village officers to use in their

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discretion water power, steam power, electricity, or a combination of any of these, does not offend against section 332 of the Election Law, which requires different propositions or questions to be separately submitted. Everett v. Potsdam, (1906) 112 App. Div. 727, 98 N. Y. S. 963. See in this connection Matter of Le Roy, (1898) 35 App. Div. 177, 55 N. Y. S. 149; Op. Atty.-Gen. (1902) 263.

Single proposition for water and lighting systems.— It was held in Hempstead v. Seymour, (1901) 34 Misc. 92, 69 N. Y. S. 462, that village bonds issued under a single resolution of the village trustees providing for borrowing a gross sum not only to purchase, construct and maintain a village waterworks, but also a village lighting system, were invalid, as the taxpayer when voting upon the resolution has no freedom of choice and must vote for or against both propositions when he might be in favor of one and opposed to the other.

Certificate from state commission.— It was held in Potsdam Electric Light, etc., Co. v. Potsdam, (1905) 49 Misc. 18, 97 N. Y. S. 190, affirmed 113 App. Div. 894, 98 N. Y. S. 1113, that where a statute (L. 1905, ch. 737, § 11) prohibited lighting systems in municipalities, for other than municipal purposes, without a certificate of authority from the state commission of gas and electricity, a lighting system voted for by the electors of a village for supplying it and its inhabitants with electric lights might not be built without the prescribed certificate; and that where, under the resolution adopted prior to the enactment of the statute authorizing such lighting system to be built, no irrevocable steps had been taken nor money expended, a taxpayer's action would lie to restrain the village trustees from issuing bonds for the establishment of the lighting system voted for by the electors.

§ 242. Acquisition of existing private system. If a proposition be adopted for the acquisition of an existing private lighting system, the board of light commissioners may purchase the same at a price not exceeding the sum specified therein. If the board can not agree with the owners of the system for its purchase, proceedings may be taken to acquire the same by condemnation. If the value thereof fixed by the commissioners appointed in the condemnation proceedings be greater than the sum specified in the proposition, such proceedings must be discontinued, unless the payment of the additional amount be authorized at a village election. If the proceedings be so discontinued, the costs and disbursements of the defendants therein are a charge against the village.

This section was derived from Village Law, L. 1897, ch. 414, § 242.
Condemnation proceedings generally: see Code Civ. Pro., § 3357 et seq.

§ 243. Establishment of lighting system. If a proposition to establish a lighting system be adopted, the board of light commissioners shall proceed to construct such system accordingly. It shall prepare a map and plans of such system, indicating the streets and localities in the village to be supplied with light thereby, and shall file the same in the office of the village clerk. The board of light commissioners may acquire in the name of the village, by purchase, if it can agree with the owners, or otherwise by condemnation, any land necessary for such system. The board may amend the map and plans at any time and such amended map shall be filed in the office of the village clerk in like manner as the

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original. The board may construct such lighting system by contract or otherwise.

This section was derived from Village Law, L. 1897, ch. 414, § 243.
Condemnation proceedings generally: see Code Civ. Pro., § 3357 et seq.

§ 244. Supervision and extension of system. The lighting system acquired or established under this article shall be under the control and supervision of the board of light commissioners. The board shall keep it in repair and may, from time to time, if it has sufficient funds, extend such system, if the expense thereof in any year will not exceed one thousand dollars. If the estimated expense will exceed one thousand dollars, such extension can only be made when authorized by a proposition adopted at an election, in which event, it shall be so made. Such system may be so extended outside the village in, upon and along the highways within a town in which the village is wholly or partly situated, [1] or within a town adjoining that in which the village is situated if the village be wholly within one town and in a county of less than one hundred thousand population, provided, however, that if at the time of such extension there shall be a private electric light corporation operating within such village or within the territory into which such system shall be extended, such extension shall not be made without the permission and approval of the proper public service commission. If such system shall be so extended outside of a village into or through a town [2] or adjoining town or a lighting district thereof, the board of light commissioners of the village may contract with the town board of such town for lighting the streets, highways, public grounds and public buildings of such town or lighting district, in pursuance of the provisions of article twelve of the town law, which shall be applicable to such contract and to the levying of a tax for the payment of the amounts which shall be payable thereunder to the treasurer of the village. Wherever such system shall be so extended outside a village, occupants of premises adjacent to such extended system outside the village shall be entitled to be supplied with light therefrom under the same conditions and at the same rates as occupants of premises in the village.

This section was derived from Village Law, L. 1897, ch. 414, § 244. It was amended by L. 1912, ch. 364, § 1, by which the sum mentioned in the second and third sentences was made to read one thousand dollars in place of five hundred dollars. It also added to the section that part of it which begins in the third sentence with the words "in which event, it shall be so made," and continues to the end of the section. It was amended by L. 1916, ch. 20, § 1. The amendments are shown in the footnotes.

§ 245. Ordinances. The board of light commissioners may adopt ordinances, not inconsistent with law, for enforcing the

[1] "or within a town . . . one hundred thousand population" new.
[2] "or adjoining town" new.

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collection of light rents and relating to the use of light, and may enforce observance thereto by cutting off the supply of light or by the imposition of penalties.

This section was derived from Village Law, L. 1897, ch. 414, § 245.
Approval of ordinances and when to take effect: see supra, §§ 94, 95.
Definition of ordinances: see supra, § 92.
Village ordinances generally: see supra, § 90.

§ 246. Establishment of light rents. The board of light commissioners shall establish a scale of rents for the use of light, to be called "light rents," and to be paid at such times as the board may prescribe.

This section was derived from Village Law, L. 1897, ch. 414, § 246.

§ 247. Annual report of light commissioners. Between the first and fourth day of March in each year, the board of light commissioners shall file with the village clerk a report containing a statement of the following facts:

1. The amount of money on hand at the beginning of the preceding fiscal year, and the receipts from all sources during such year.
2. An itemized statement of the amount paid out during such year, and the balance on hand.
3. The outstanding indebtedness of the department, either bonded or otherwise, separately stated.
4. The estimated deficiency in the amount necessary to pay the principal or interest or the expenses of the department during the next fiscal year, after applying thereto the probable amount of light rents to be received, and any amount available from the sinking fund.
5. The improvements and extensions made during such preceding year, and the general condition of the lighting system.
6. Such other facts as the board deems important for the information of the village, together with such recommendations concerning the department as may be deemed proper.

This section was derived from Village Law, L. 1897, ch. 414, § 247.
Auditing and paying fraudulent claims: see PENAL LAW, § 1863.
Obtaining proceeds of fraudulent audit or payment: see PENAL LAW, § 1864.
Falsification of accounts by public officers: see PENAL LAW, § 1865.
Fraudulently presenting bills or claims to public officers for payment: see PENAL LAW, § 1872.

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ARTICLE 11

SEWERS

Section 260. Establishment of sewer system.
261. Construction of a sewer at expense of village.
262. Reimbursement for sewers constructed at private expense.
263. Construction of sewer at joint expense of village and of property benefited.
264. Construction of sewers wholly at expense of property benefited.
265. Acquisition of property by condemnation.
266. Contracts for construction of system.
267. Supervising engineer; inspectors.
268. Apportionment of local assessment.
269. Appeal from apportionment.
270. Hearing of appeal.
271. Reapportionment.
272. Procedure by new commissoners.
273. Fees of commissioners.
274. Expense of construction; how raised.
275. Tax for unpaid assessments.
276. Contracts with other municipalities, sewer districts, et cetera.
277. Annual report of sewer commissioners.
278. Sewer connections.

§ 260. Establishment of sewer system. The board of sewer commissioners of a village may establish, extend and maintain a sewer system therein. Before taking any proceedings for the construction of any sewer, the board, at the expense of the village, shall, unless such map and plan have already been officially approved by the state commissioner of health and copies filed in the state department of health and in the office of the village clerk, cause a map and plan of a permanent sewer system for such village to be made, with specifications of dimensions, connections and outlets or sewage disposal works. It may also include any existing sewer in the village, which on examination by the village engineer shall be found feasible and proper to incorporate or include in the proposed system. Such map and plan shall be comprehensive and shall cover all portions of the village, but the village may construct the whole of the said system or may temporarily omit any portions thereof until such portions may be necessary, subject to the approval of such omission by the state commissioner of health as hereinafter provided. Such map and

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plan shall be submitted to the state commissioner of health for his approval, and if approved shall be filed in his office. A copy thereof shall also be filed in the office of the village clerk. The map and plan may be amended, with the approval of the state commissioner of health, and when so amended and approved shall be filed in the same offices as the original. No work of any kind shall be done on or for the construction, extension, reconstruction, removal or modification of any system of sewers or of any sewer thereof until a map and plan covering the entire system shall first have been duly approved and filed as above provided, and in the execution of the construction, extension, reconstruction, removal or modification of any system of sewers or of any sewer thereof no deviations from the plans as finally approved and filed shall be made until plans or descriptions adequately showing such deviations are first approved and filed as above provided. Whenever the board of sewer commissioners of the village shall deem it desirable to the interests of the village that a portion of the permanent general system of sewers and sewage disposal thereof may be temporarily omitted or deferred, it shall certify that fact in writing to the state commissioner of health, designating by a map or otherwise the portions of the system to be omitted, or the portion not to be omitted, and on receipt of the same the state commissioner of health may approve of such temporary omission and shall certify his determination to the board of sewer commissioners of the village.

This section was derived from Village Law, L. 1897, ch. 414, § 260, as amended by L. 1906, ch. 278, § 1.

Provisions applicable to certain villages: see infra, § 310 et seq.

Provisions applicable to a village embracing the entire territory of a town: see infra, § 322 et seq.

Potable waters generally: see PUBLIC HEALTH LAW, § 70 et seq.

Contracts for sewerage: see GENERAL MUNICIPAL LAW, § 120.

Colleges may construct sewer systems: see EDUCATION LAW, § 69.

Sufficiency of sewer plan.— It has been held that the present section does not require the map and plans of a village sewer system to embrace every lateral sewer that may become necessary with the growth and development of the village, but it is sufficient if the plan is comprehensive enough to provide a system of sewers which will be efficient to drain all portions of the village if connections are made therewith. Mead v. Turner, (1909) 134 App. Div. 691, 119 N. Y. S. 526, affirming 60 Misc. 145, 112 N. Y. S. 127.

Liability for damages.—As to the liability of villages for damages caused in the construction and maintenance of sewers, see Garratt v. Canandaigua, (1892) 135 N. Y. 436, 32 N. E. 142; Stoddard v. Saratoga Springs, (1891) 127 N. Y. 261, 27 N. E. 1030; Rutherford v. Holley, (1887) 105 N. Y. 632, 11 N. E. 818; Gerard v. Liberty, (1905) 106 App. Div. 357, 94 N. Y. S. 949; Butler v. White Plains, (1901) 59 App. Div. 30, 69 N. Y. S 193; Bolton v. New Rochelle, (1895) 84 Hun 281, 32 N. Y. S. 442; Gillett v. Kinderhook, (1894) 77 Hun 604, 28 N. Y. S. 1044; Schriver v. Johnstown, (1893) 71 Hun 232, 24 N. Y. S. 1083, affirmed (1896) 148 N. Y. 758, 43 N. E. 989.

§ 261. Construction of a sewer at expense of village. Upon the adoption of a proposition therefor the whole or any part of the sewer system may be constructed at the expense of the village.

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The proposition shall describe the portion of the system proposed to be so constructed, and shall also contain a statement of the estimated maximum and minimum cost thereof.

This section was derived from Village Law, L. 1897, ch. 414, § 261.

Necessity of statement as to maximum and minimum cost.—A proposition for the construction of a sewer system is fatally defective which does not contain a statement of the estimated maximum and minimum cost of the improvement. Ward v. Kropf, (1910) 120 N. Y. S. 476.

Amending plans without resubmission to electors.—The extent to which a village may lawfully be bound by a contract for the construction of sewers is limited by the terms of the proposition adopted by the electors; the maximum expense specified in the proposition may not be exceeded, none of the territory specified therein may be omitted, and the plans of construction may not be altered without resubmission to a vote of the electors. Op. Atty.-Gen. (1904) 328.

Validity of bonds issued pursuant to defective proposition.—A proposition for the adoption by a village of a sewer system must be submitted in the form required by the statute at an election to the voters of the village qualified to vote thereat. Where, therefore, village bonds are issued by virtue of a proposition adopted by the voters of the village which merely embodies a prior resolution passed by the village trustees authorizing them to borrow a certain sum to construct a sewer system and raise the money by tax, the bonds are void even in the hands of a bona fide holder. Brockport v. Green, (1902) 39 Misc. 231, 79 N. Y. S. 416.

§ 262. Reimbursement for sewers constructed at private expense. If the whole of the sewer system be constructed at the expense of the village and a sewer theretofore constructed wholly or partly at private expense be included in the map or plan of the system, the owners of the property upon which such expense was assessed shall be entitled to reimbursement therefor. Claims for such reimbursement may be presented to and audited by the board of sewer commissioners, and the amounts allowed shall be paid in the same manner as other expenditures for the sewer system.

This section was derived from Village Law, L. 1897, ch. 414, § 262.

Auditing and paying fraudulent claims and receiving proceeds thereof: see PENAL LAW, §§ 1863, 1864.

Fraudulently presenting bills or claims to public officers for payment: see PENAL LAW, § 1872.

Utilizing work done under void contract.—Where a municipal contract for the construction of a sewer system has been declared invalid, owing to a preliminary failure on the part of the authorities to observe a requirement of the Village Law, the contractors have no legal claim against the municipality based upon a partial construction by them of the work. Where, however, the municipality thereafter decides to construct a system of sewers according to the previously adopted plans and specifications, it may not appropriate and utilize the work and materials of the contractors without coming under an implied obligation to make compensation. It may abandon that portion of the plan without liability arising; but if it does include the sewer work already completed, it takes what is not its property and the ordinary obligation at law will arise to pay for it. Ward v. Kropf, (1913) 207 N. Y. 467, 101 N. E. 469, affirming 143 App. Div. 919, 127 N. Y. S. 1148.

§ 263. Construction of sewer at joint expense of village and of property benefited. Upon the adoption of a proposition therefor, the whole or any part of the sewer system may be constructed at

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the joint expense of the village and of the property benefited. The proposition shall describe the portion of the system proposed to be so constructed, shall contain a statement of the estimated maximum and *mimimum cost thereof, and also of the proportion of the expense to be assessed upon the village at large, and the aggregate proportion to be assessed upon the property benefited. If the proposition be adopted such aggregate proportion shall be equitably adjusted with reference to the benefits to be derived therefrom.

This section was derived from Village Law, L. 1897, ch. 414, § 263.

Sewer replacing other sewer as a "new sewer."—It has been held that a sewer constructed to take the place of one which has proved inadequate, which is laid at a different depth and in a different place in the street, is a new sewer within the meaning of a village charter provision that the expense of new sewers shall be assessed on the property benefited. Denise v. Fairport, (1895) 11 Misc. 199, 32 N. Y. S. 97.

§ 264. Construction of sewers wholly at expense of property benefited. The owners of two-thirds of the entire frontage of the portion of a street or streets in which a sewer is proposed to be constructed may present to the board of sewer commissioners a petition for the construction of such a sewer. The board shall cause a notice of at least ten days to be given to each person owning land fronting on such portion of such street or streets, of a time and place where it will meet and hear persons interested in the construction of such sewer. After such hearing the board may grant the petition in whole or in part, and shall construct a sewer as ordered, and assess the entire expense thereof upon the property benefited. Where such petition is for the construction of a sewer through different streets, such sewer shall be deemed one sewer, and such streets one continuous street, for the purposes of this section. A petition under this section may limit the maximum amount of the expense to be incurred in the construction of such sewer.

This section was derived from Village Law, L. 1897, ch. 414, § 264.

Manner of serving notice: see infra, § 330.

Procedure for sewer extension as governed by special charter.—It was held in Harris v. Saratoga Springs, (1916) 171 App. Div. 282, 156 N. Y. S. 844, affirming 152 N. Y. S. 73, that the present section was a re-enactment of section 264 of the Village Law of 1897 (L. 1897, ch. 414), and by virtue of chapter 596 of the Laws of 1909, prescribing the rules for the construction of the Consolidated Laws, was to be deemed to have been enacted on the date when the original statute was passed and not on the date when the Consolidated Laws were enacted, and this being prior to the enactment of the charter of the village of Saratoga Springs, which governs the extension of a sewer system, the procedure prescribed by the charter should be followed in the matter of extending a sewer in the village and levying an assessment on the property benefited.

§ 265. Acquisition of property by condemnation. If the board of sewer commissioners is unable to agree with the owner for the

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purchase of real property necessary for the sewer system, it may acquire the same by condemnation.

This section was derived from Village Law, L. 1897, ch. 414, § 265.
Condemnation proceedings generally: see Code Civ. Pro., § 3357 et seq.

§ 266. Contracts for construction of system. The board of sewer commissioners of a village authorized to construct the whole or any part of a sewer system shall advertise for proposals for the construction thereof, either under an entire contract, or in parts or sections, as the board may determine. Such advertisement shall be published once in each of two successive weeks in each newspaper published in the village. The board may require a bond or a deposit from the person submitting a proposal, the liability of such bond to accrue, or such deposit to be forfeited to the village, in case such person shall refuse to enter into a contract in accordance with his proposal. The board may accept or reject any proposal, may contract with other than the lowest bidder, or may reject all proposals and advertise again. No contract shall be made by which a greater amount shall be agreed to be paid than the maximum stated in the proposition or in the petition for the construction of such sewer.

This section was derived from Village Law, L. 1897, ch. 414, § 266.
Contracts for sewerage: see GENERAL MUNICIPAL LAW, § 120.

§ 267. Supervising engineer; inspectors. The board of sewer commissioners may employ a supervising engineer to superintend and inspect the construction of any sewer or works connected therewith, and also such inspectors as may be necessary, and fix the compensation of such engineer and inspectors. Such compensation shall be treated as a part of the expense of construction.

This section was derived from Village Law, L. 1897, ch. 414, § 267.
Inspector of village annexed to New York by annexation act.— It was held in Ford v. New York, (1899) 26 Misc. 292, 56 N. Y. S. 4, that a person employed as sewer inspector of a village that became a part of the city of New York by the annexation act (L. 1895, ch. 934), was a village employee, whose employment and office were ended when the village was annexed.

§ 268. Apportionment of local assessment. If the whole or any part of the expense of constructing a sewer is to be assessed upon the lands benefited, the board of sewer commissioners shall prepare and file in the office of the village clerk a map and plan of the proposed area of local assessment. Such expense shall thereupon be apportioned upon the lands within such area in proportion as nearly as may be to the benefit which each lot or parcel will derive therefrom, and the ratio of such benefit shall be established. After making such apportionment the board shall serve upon each land owner a notice thereof and of the filing of such map and plan, and that at a specified time and place a hearing will be had to consider and review the same. Such notice must be served at least

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six days before the hearing. The board shall meet at the time and place specified and hear objections to such apportionment. It may modify and correct the same, or exclude land from the area of local assessment. The board of sewer commissioners, upon the completion of such apportionment, shall file the same in the office of the village clerk. The apportionment shall be deemed final and conclusive, unless an appeal be taken therefrom within fifteen days after the filing thereof.

This section was derived from Village Law, L. 1897, ch. 414, § 268.
Lien of assessment for local improvement: see supra, § 113.
General rule of apportionment.— In apportioning the expense of sewer construction upon the property benefited the board of sewer commissioners should consider the effect of the improvement upon the market value of the property and make the assessment in view of that fact without regard to the present use or the purpose of the owner in relation to future enjoyment. Matter of Klock, (1898) 30 App. Div. 24, 51 N. Y. S. 897; Matter of Wheeler, (1902) 39 Misc. 484, 80 N. Y. S. 204.

§ 269. Appeal from apportionment. A person aggrieved by an apportionment may, within fifteen days after the filing thereof, appeal therefrom to the county court of a county in which any part of the village is situated. Such appeal shall be taken by a notice, stating the grounds thereof, addressed to the board of sewer commissioners, and filed with the village clerk.

This section was derived from Village Law, L. 1897, ch. 414, § 269.

§ 270. Hearing of appeal. Either party may bring on the appeal upon a notice of not less than ten nor more than twenty days. All appeals from the same apportionment must be consolidated and heard as one appeal. The county court may affirm or reverse the apportionment. If it be reversed upon the ground that it is erroneous, unequal or inequitable, the court shall by the order of reversal appoint three disinterested freeholders of the village as commissioners to make a new apportionment, and no appeal shall be allowed from such order.

This section was derived from Village Law, L. 1897, ch. 414, § 270.
County court always open: see infra, § 342.

§ 271. Reapportionment. A reapportionment shall be made in the following cases:

1. By the commissioners appointed by the county court, where the original apportionment is reversed on the ground that it is erroneous, unequal or inequitable.

2. By the board of sewer commissioners where the original apportionment is reversed upon any other ground. A reapportionment under this subdivision shall be made in like manner as the original.

This section was derived from Village Law, L. 1897, ch. 414, § 271.

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§ 272. Procedure by new commissioners. The commissioners appointed by the county court shall give notice of the time and place at which they will meet to make such reapportionment, and shall serve notice thereof at least ten days before such meeting upon each owner of land within the area of local assessment as finally fixed by the board of sewer commissioners. They shall meet at the time and place specified and make such reapportionment in the manner herein prescribed for the board of sewer commissioners. They shall file such reapportionment in the office of the village clerk, and it shall be final and conclusive.

This section was derived from Village Law, L. 1897, ch. 414, § 272.
Manner of serving notice: see infra, § 330.

§ 273. Fees of commissioners. Each commissioner appointed by the county court is entitled to five dollars for each day necessarily spent in making such reapportionment, besides his actual necessary expenses. Such fees and expenses are a charge against the village, and must be audited by the board of trustees. The amount thereof shall be added to the portion of the expense of constructing such sewer or sewer system which is to be assessed against property specially benefited.

This section was derived from Village Law, L. 1897, ch. 414, § 273.
Taking unlawful fees: see PENAL LAW, § 1826.

§ 274. Expense of construction; how raised. The expense of constructing a sewer or a sewer system may be raised in an entire amount or in smaller sums from time to time as the board of sewer commissioners may determine. If any portion of such expense is to be borne by the village, bonds or certificates of indebtedness may be issued therefor. If such expense or any part thereof is to be assessed upon property benefited, the board may assess the same, or the instalment to be raised, on the several benefited lots or parcels, in accordance with the apportionment and ratio established under this article. Notice of such assessment shall be given to the owners, who may pay the amounts assessed within ten day after the service of such notice. At the expiration of such time bonds or certificates of indebtedness may be issued for the aggregate amount of such assessment then remaining unpaid.

This section was derived from Village Law, L. 1897, ch. 414, § 274.
Lien of assessment for local improvement: see supra, § 113.
Manner of serving notice: see infra, § 330.
Issuance, registry and payment of municipal bonds: see GENERAL MUNICIPAL LAW, §§ 7, 9, 10.
Maximum rate of interest on municipal bonds: see GENERAL MUNICIPAL LAW, § 21.

§ 275. Tax for unpaid assessments. The board of trustees shall include in the annual tax levy the principal or interest

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accruing during the same fiscal year upon bonds or certificates of indebtedness issued on account of default in the payment of local assessments under this article, and shall levy the same upon the lots or parcels in default.

Such principal shall be apportioned among the lots or parcels in default so that the tax thereon will be the same as if an equal portion of the assessment were then to be paid. Interest on an unpaid assessment shall be added to such tax at the rate payable by the bond or certificate of indebtedness, which must be computed to the time when the principal or an instalment will become due; or if no principal will become due during the fiscal year, then the interest accruing during that year upon the assessment must be levied upon such lot or parcel.

This section was derived from Village Law, L. 1897, ch. 414, § 275.
Lien of assessment for local improvement: see supra, § 113.
Cited.—This section was cited in Matter of Kenmore, (1908) 59 Misc. 388, 110 N. Y. S. 1008, an investigation of the financial affairs of a village under section 4 of the General Municipal Law.

§ 276. Contracts with other municipalities, sewer districts, et cetera. The board of sewer commissioners may contract for the connection of the sewers thereof with the sewers of another village, or of a town, or city, or of a sewer district established under the provisions of article eleven of the town law;[1] or jointly with such other village or a town or city or sewer district established as aforesaid, may construct, maintain, operate or use sewers, outlets or disposal works; or may contract with any such other village, or a town, or city, or sewer district established as aforesaid for the right to construct and maintain through any such other village, town or city, or sewer district established as aforesaid, an outlet sewer, including the right to acquire real property for such sewer outlet, which thereupon may be acquired either at private sale or by condemnation as authorized by this act. [2]No sewer, outlet or disposal works of any other village, town or sewer district thereof, or city, shall be constructed in any village without the approval of the board of sewer commissioners of the village in which such sewer, outlet or disposal works shall be constructed, and no such contract shall be made unless a proposition therefor be adopted [3]by the village constructing the sewer, outlet or disposal works, stating the maximum expense.

This section was derived from Village Law, L. 1897, ch. 414, § 276. It was amended by L. 1909, ch. 212, § 1, and by L. 1912, ch. 122, § 1. The amendment by the last cited statute added to the section the provisions relating to

[1] "or of chapter three hundred and forty-eight of the laws of nineteen hundred and one and the laws supplementary thereto or amendatory thereof" omitted.
[2] "No sewer, outlet . . . shall be constructed and" in place of "But."
[3] "by the village . . . or disposal works" new.
new.

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contracts with established sewer districts. It was further amended by L. 1915, ch. 25, § 1. The amendments are shown in the footnotes.

Contracts for sewerage: see GENERAL MUNICIPAL LAW, § 120.

§ 277. Annual report of sewer commissioners. Between the first and fourth day of March in each year, the board of sewer commissioners shall file with the village clerk a report containing a statement of the following facts:

1. The amount of money on hand at the beginning of the preceding fiscal year, and the receipts from all sources during such year.

2. An itemized statement of the amount paid out during such year, and the balance on hand.

3. The outstanding indebtedness of the department, either bonded or otherwise, separately stated.

4. A statement of the principal or interest which will become due during the current fiscal year on bonds or certificates of indebtedness.

5. The improvements and extensions made during such preceding year, and the general condition of the sewer system.

6. Such other facts as the board deems important for the information of the village, together with such recommendations concerning the department as may be deemed proper.

This section was derived from Village Law, L. 1897, ch. 414, § 277.

Auditing and paying fraudulent claims and receiving proceeds thereof: see PENAL LAW, §§ 1863, 1864.

Misappropriation and falsification of accounts by public officers: see PENAL LAW, § 1865.

Fraudulently presenting bills or claims to public officers for payment: see PENAL LAW, § 1872.

§ 278. Sewer connections. The board of sewer commissioners shall cause a notice to be published in the official newspaper of the village and in all other newspapers published therein requiring the owners or occupants of any and all property fronting or abutting on any street or portion thereof in or upon which any public sewer is about to be laid or is being laid or has been laid by the said board to make and lay connection pipes to and from the sewer mains in said street or any portion thereof in front of each separate piece of property and where directed by said board, within such time and in such manner and under such inspection as said board shall prescribe, and whenever any such owner or occupant shall have made default in making such connections with said sewer mains opposite the lands and premises owned or occupied by him as directed in and required by said printed notice therefor in the manner and within the time specified, the said board shall have power and authority to so make, extend and complete the same to the property line of the lands and premises so owned or occupied opposite thereto and in front

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thereof, and to connect the same with any existing connecting pipes in front thereof, and the actual expense thereof, including all labor done and materials used in doing and completing the same, shall be assessed by the trustees of the village upon each separate piece of property opposite which the same shall be done and completed and shall be a lien and liens on said premises and lots of land respectively, and the same shall be collected in the same manner as other local assessments or assessments for local improvements as provided by the special charter of the village or the general village laws of the state as the case may be, and when so collected the amount thereof shall be paid into the sewer funds of the village.

New. Added by L. 1910, ch. 259, § 1. Another section numbered 278 was added by L. 1910, ch. 626, § 1. See article 11-A, section 278, infra.

Collection of taxes by treasurer: see supra, § 117.

Lien of assessment for local improvement: see supra, § 113.

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*ARTICLE 11-A

Board of Public Works

Section 278. Establishment of board of public works; appointments.
279. Organization of board; officers; meetings; general powers.
280. Further specific powers and duties of the board.
281. Reports.
282. Funds; how raised and applied.
283. Application of other provisions.

§ 278. Establishment of board of public works; appointments. After a proposition therefor has been duly adopted by the electors at an annual or special election, any village, whether incorporated under this chapter or other general law, or under a special act, may establish a board of public works therein which, when established as aforesaid, shall be subject to the provisions of this article. The board shall consist of four members. Upon the adoption of the proposition the president of the village shall forthwith, by and with the advice and consent of the board of trustees, appoint one member for a term ending on the next ensuing thirty-first day of March and the other †member for such terms, respectively, that the term of one member shall expire annually on the thirty-first day of March. Thereafter one member shall be in like manner appointed annually on the last Monday in March to hold office from and including the succeeding first day of April for the term of four years; provided, however, that appointments shall take effect at the time of their confirmation by the board of trustees, and until such confirmation the incumbent whose regular term has expired shall hold over; and provided further, that if the first and second appointments submitted to the board in any year are neither of them confirmed, no further appointment shall be made for such year but the member thus holding over shall continue to serve until the thirty-first day of March of the following year. A vacancy occurring at any time and for any cause shall be filled by the appointment in like manner of a member for the unexpired term of the member whose position is thus made vacant. Appointments shall be made in such manner that not over two members of the board at any time shall belong to the same political party. All appointments, whether regular or to fill a vacancy, shall be made in writing and filed with the village clerk and a certified transcript of the motion or reso-

* This article was added to Village Law by L. 1910, ch. 626, § 1.
† So in original.

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lution confirming the same shall be attached thereto. The members are hereby severally designated "commissioners of public works" and may be referred to as such. No such commissioner shall hold any other village, school or town office during his term and no person shall be appointed such commissioner who is not a resident of the village and a qualified elector therein; the commissioners shall serve without compensation and shall have no pecuniary interest in any contract or dealing with the said board of public works of the village, in any matter under the official management of the board. Every commissioner shall, before entering upon the discharge of his duties, take and file with the village clerk the constitutional oath of office.

New. Added by L. 1910, ch. 626, § 1. Another section numbered 278 was added to article 11 by L. 1910, ch. 259, § 1. See section 278, supra.

Provisions applicable to certain villages: see infra, § 310 et seq.

Provisions applicable to a village embracing the entire territory of a town: see infra, § 322 et seq.

Holding over after expiration of term: see PUBLIC OFFICERS LAW, § 5.

Vacancies in office: see PUBLIC OFFICERS LAW, § 30.

Form of constitutional oath: see CONSTITUTION, art. XIII, § 1.

Official oaths generally: see PUBLIC OFFICERS LAW, § 10 et seq.

Acting in public office without having qualified: see PENAL LAW, § 1820.

Officials not to be interested in sales, leases or contracts: see PENAL LAW, § 1868.

§ 279. Organization of board; officers; meetings; general powers. Within ten days from the original appointment of members of the board, and within a like period each year after the thirty-first day of March, the board shall meet in the trustees' rooms or in such other place as the trustees may provide as its office and choose from their number a president, to serve for one year, and a clerk to hold office at the pleasure of the board. The clerk shall receive such salary as the board of public works may, from time to time by resolution, determine, payable as the salaries of other village officers or employees are paid. It shall be the duty of the clerk to record the proceedings of the board of public works in a book to be kept for that purpose, and perform such other duties connected with the office as shall be required by said board. Said board shall meet each month and at such other times as they may decide. The said board is hereby authorized and empowered to make rules, not inconsistent with law, as to its meetings and all other matters under its control. Said board of public works shall in and for the village have all the powers and perform all the duties of commissioners of highways in towns, except as herein otherwise provided. The said board is vested with the charge, management, control and maintenance of the highways, streets, storm water sewers, gutters, curbs, sidewalks, public parks, places and squares within the village and of all the machinery, tools and implements used in connection therewith, and of naming the streets

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and giving numbers to lots and tenements and changing the same. Upon the organization of said board of public works all of the property and effects owned by the village used or to be obtained for use in connection with the matters to which the provisions of article six of this chapter, or like provisions in the special act incorporating the village pertain, shall be under the direction and management of said board of public works. All the powers and duties vested by law in the board of trustees of said village, as to the streets, sidewalks, curbs, gutters, storm water sewers, public places, squares, parks and bridges are hereby transferred to and conferred upon such board of public works.

New. Added by L. 1910, ch. 626, § 1.
General powers and duties of town superintendent of highways: see HIGHWAY LAW, § 47.

§ 280. Further specific powers and duties of the board. The said board of public works shall have power:

1. To appoint and employ a superintendent of streets, who shall be a resident of said village, fix his salary and remove him at pleasure. He shall, under the direction and control of the board of public works, have the care and superintendence and repair and keep in order the highways, streets and parks in said village.

2. To make contracts relating to the construction and repair of bridges, highways, streets, curbing, storm water sewers, sidewalks, public places, squares and parks, cleaning streets and the removal of dirt therefrom, the grading, paving, repaving and macadamizing of all streets, public places and squares, and the provision of all materials, machinery, implements, utensils and labor therefor.

3. To construct, lay out, extend, alter, straighten all streets, sidewalks, curbs, gutters, storm water sewers, public places, squares and parks in said village; no street shall be discontinued and no new street opened without the consent of all persons owning or interested in lands thereon, except by proceedings under the highway law.

4. To grade, pave, repave or macadamize any street or section of a street or any public place or square and to fix and regulate the grade line of streets and sidewalks, and to cause said walks and gutters to be made and curbs to be set of such materials as it may direct.

5. To cause all necessary surveys, maps and profiles relating to streets and sidewalks existing at the time or which may thereafter exist, and to any work within its jurisdiction, to be made.

6. To regulate the planting, trimming, rearing or removing of trees in the streets, public parks, places and squares in the village.

7. To improve and ornament the public parks, pleasure grounds and to make regulations in the management and use thereof.

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8. To regulate the use of storm water sewers and to grant permits therefor.

New. Added by L. 1910, ch. 626, § 1.

§ 281. Reports. After the close of the fiscal year and prior to the time when the annual financial report of the trustees is required to be published, the said board of public works shall make out and file with the village clerk a report, in writing, containing a statement of the following matters:

1. The amount of money on hand at the beginning of the preceding fiscal year, under its control, and the receipts from all sources during said year.

2. An itemized statement, in detail, of the amount paid out during said year, to whom and what for, and balance on hand.

3. The outstanding indebtedness of said board.

4. The improvements and extensions made during said preceding year and the general condition of its department.

5. An estimated statement of the amount necessary to defray the cost.

(a) For cleaning the streets.

(b) For ordinary repairs to streets.

(c) For the portion of the expense of paving and curbing.

(d) For the maintenance, ornamentation and improvement of the public parks.

(e) For the care and ordinary repairs of the storm water sewers.

(f) For extending the storm water sewers.

(g) For the purchase or repair of machinery, implements and utensils for the use of the board.

(h) For salaries.

(i) For other expenses of said board not specifically mentioned.

(j) Such other facts as said board deems important for the information of the village, together with such recommendations as it may deem proper.

(k) Said report shall be published with the annual report of the board of trustees of said village.

New. Added by L. 1910, ch. 626, § 1.

Fiscal year: see supra, § 100.

Auditing and paying fraudulent claims and receiving proceeds thereof: see PENAL LAW, §§ 1863, 1864.

Misappropriation and falsification of accounts by public officers: see PENAL LAW, § 1865.

§ 282. Funds; how raised and applied. The board of trustees shall place the amount so stated and estimated in the village budget and tax assessment as part of the ordinary expenses of the village and raise the same by tax, provided, however, that if the sum

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so estimated exceeds in the aggregate the sum of fifteen thousand dollars in a village of the first class, five thousand dollars in a village of the second class or twenty-five hundred dollars in a village of the third class, the same shall not be thus raised without the approval of the electors of the village as shown by a proposition therefor adopted at the annual election occurring next after the filing of such estimate. If any such estimate, submitted to the electors pursuant to the above requirements, is not approved then the amount to be raised as aforesaid for the board of public works, for the year to which such estimate relates, shall be the maximum sum above specified for village of the class to which the village belongs. When available therefor, the village treasurer shall place the moneys so raised to the credit of the street fund, which fund shall be applied only to the payment of drafts, or orders issued by said board of public works, signed by its clerk and president. In case the board of public works shall at any time determine that the amount so placed to the credit of the board of public works is more than will be necessary to defray the expenses of said board of public works for such current year, the said village treasurer shall by direction of said board of public works transfer the excess thereof from the street fund to any other fund of said village. In a village having a board of public works all moneys required for exercising its powers and duties shall be payable exclusively from the street fund.

New. Added by L. 1910, ch. 626, § 1.
Lien of assessment for local improvement: see supra, § 113.
Refunding illegal assessment: see GENERAL MUNICIPAL LAW, § 84.

§ 283. Application of other provisions. All provisions of this chapter conferring powers or imposing duties generally upon all municipal boards as such, without reference to the particular functions of any such board, shall apply to the board of public works; and a board of public works established under this article may be abolished in the manner provided by this chapter for the abolition of separate municipal boards. In the event of such abolition, the powers and duties of the board of public works, so far as they were previously imposed on and exercised by the board of trustees, shall revert to the latter board.

New. Added by L. 1910, ch. 626, § 1.

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ARTICLE 12

CEMETERIES

Section 290. Acquisition of lands for parks or cemeteries.
291. Division into lots; conveyances of lots.
292. Ordinances.
292-a. [Assessments for care of lots, village of Watkins.]
293. Interment of strangers.
294. Record of interments.
295. Property in trust.
296. Annual report of park and cemetery commissioners.
297. [Powers of park commissioners; limitation of expenditures.]

§ 290. Acquisition of lands for parks or cemeteries. The board of park or cemetery commissioners of a village may, in behalf of the village, accept by gift, grant or devise thereto, land for a village park or village cemetery within the village, or wholly within three miles of the boundaries thereof; or may require the board of trustees to submit to a village election a proposition to purchase for such purpose any lands so located, specifying the maximum amount to be paid therefor and the mode of raising such amount. If the proposition be adopted, the board of cemetery commissioners may purchase such lands accordingly, or, if unable to agree with the owners for the purchase thereof, may acquire the title thereto by condemnation; but if the commissioners appointed in the condemnation proceedings shall fix the value of the land at a larger amount than authorized to be paid therefor by such election, the condemnation proceedings shall be abandoned and the costs of the defendant shall be paid by the village unless payment of such larger amount shall be authorized at a village election. All lands acquired for a village park or cemetery shall be a part of the territory of the village.

This section was derived from Village Law, L. 1897, ch. 414, § 290. It was amended by L. 1909, ch. 469, § 1.

Provisions applicable to certain villages: see infra, § 310 et seq.

Provisions applicable to a village embracing the entire territory of a town: see infra, § 322 et seq.

Acquisition of lands for cemetery purposes: see GENERAL MUNICIPAL LAW, § 160.

Lands used for cemetery purposes not to be sold or mortgaged: see REAL PROPERTY LAW, § 450.

Exemption from taxation: see TAX LAW, § 4.

Cemetery corporations generally: see MEMBERSHIP CORPORATIONS LAW, § 60 et seq.

Liens on monuments and cemetery structures: see LIEN LAW, § 120 et seq.

Condemnation of real property by municipality: see GENERAL MUNICIPAL LAW, § 24.

Condemnation proceedings generally: see Code Civ. Pro., § 3357 et seq.

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Provisions of Town Law relating to cemeteries: see TOWN LAW, § 330 et seq.
Lands for cemetery purposes as a public use.— Lands appropriated for a public cemetery are devoted to a public use and may be condemned for that purpose. Farneman v. Mt. Pleasant Cemetery Ass'n, (1893) 135 Ind. 344, 35 N. E. 271.

§ 291. Division into lots; conveyances of lots. The board of cemetery commissioners has the supervision and control of all village cemeteries. It shall cause the same to be divided into lots, and provide for the conveyance thereof to individuals for the sole purpose of interments, and upon the payment of the purchase-price of any lot, shall, in the name of the village, execute, acknowledged and deliver a conveyance to the purchaser thereof. The clerk of the village shall keep a record of the sale of each lot, its number, the date of sale and the name of the purchaser; and shall record each conveyance thereof. No sale, transfer or assignment of such lot or any interest therein subsequent to the sale by the village shall be valid, unless by an instrument in writing signed and duly acknowledged and recorded in the office of the village clerk. The clerk shall be entitled to receive ten cents per folio for the recording of each conveyance.

This section was derived from Village Law, L. 1897, ch. 414, § 291.
Lot owner's right in cemeteries of religious corporations: see RELIGIOUS CORPORATIONS LAW, § 8. *In cemeteries of municipal corporations:* see GENERAL MUNICIPAL LAW, § 163.

§ 292. Ordinances. The board of park or cemetery commissioners may adopt reasonable ordinances for:

1. The care, management and protection of the park or cemetery grounds.
2. The use, care and protection of lots in such cemeteries.
3. The conduct of persons within the park or cemetery grounds, and the exclusion of improper persons therefrom.
4. Regulating the dividing marks between the various lots and parts of lots in cemeteries and their size, shape and location.
5. Preventing improper monuments, effigies and structures within the same.
6. Regulating the introduction and growth of plants, trees and shrubs within such grounds.
7. The prevention of the burial in any lot or part of any lot of any person not entitled to burial therein.

The board of park or cemetery commissioners may fix the penalties, not to exceed twenty dollars, for violations of such ordinances. Such ordinances, when adopted, shall be printed and conspicuously posted in at least five places upon the cemetery grounds.

This section was derived from Village Law, L. 1897, ch. 414, § 292. It was amended by L. 1909, ch. 469, § 1.

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Ordinances generally: see supra, § 90 et seq.
Unlawful removal or destruction of gravestone: see PENAL LAW, § 1427, subd. 2.
Killing, wounding or trapping birds or animals in cemetery: see PENAL LAW, § 1425, subd. 10.
Injury to trees in cemetery and removal of flowers or memorials from grave: see PENAL LAW, § 1427, subd. 2.

§ 292-a. [1][Assessments for care of lots, village of Watkins.] The board of park or cemetery commissioners of the village of Watkins, in the county of Schuyler, shall have, in addition to the powers granted by section two hundred and ninety-two of this chapter, the power to assess the owners of lots in any cemetery in such village an amount not exceeding two dollars per year for the purpose of raising moneys to keep the lots in such cemetery in good and proper condition, and the trustees of such village for that purpose shall have all the powers mentioned in section seventy-two of the membership corporation* law.

New. Added by L. 1915, ch. 203, § 1.

§ 293. Interment of strangers. The board of cemetery commissioners shall reserve a portion of the ground in any such cemetery for the interment of strangers and other persons who may die in the village under circumstances which render it unreasonable to require payment for making such interment.

This section was derived from Village Law, L. 1897, ch. 414, § 293.

§ 294. Record of interments. The board of cemetery commissioners shall cause an accurate record to be kept of every interment in such cemetery, specifying the lot in which such interment is made, the time when made, and the name, age and place of birth of the person interred, if these particulars can be conveniently ascertained.

This section was derived from Village Law, L. 1897, ch. 414, § 294.

§ 295. Property in trust. The board of park or cemetery commissioners of a village may take and hold any property given, bequeathed or devised to it in trust, to apply such property or the income thereof for the improvement or embellishment of such park or cemetery, or the erection or preservation of a building, structure, fence or walk therein, or, in any such cemetery, for the renewal, erection or preservation of a tomb, monument, stone, fence, railing or other erection or structure, on or around any lot therein or the planting or cultivation of trees, shrubs, flowers

[1] This section was enacted without a heading. Section head has been added for facility of reference.
* So in original.

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or plants in or about a lot therein or for otherwise caring for and maintaining a lot therein, according to the terms of such grant, devise or bequest.

This section was derived from Village Law, L. 1897, ch. 414, § 295. It was amended by L. 1909, ch. 469, § 1.

Trusts for care of cemetery lots: see REAL PROPERTY LAW, § 114-a; PERSONAL PROPERTY LAW, § 13-a.

County treasurer as trustee of funds for cemetery lots: see COUNTY LAW, § 152.

Liens on monuments and cemetery structures: see LIEN LAW, § 120 et seq.

Application to private lots.— It has been held that the present section is broad enough to apply to private lots in cemeteries. Matter of Waldron, (1907) 57 Misc. 275, 109 N. Y. S. 681.

§ 296. Annual report of park and cemetery commissioners. Between the first and fourth day of March in each year, the boards of park and cemetery commissioners shall file with the village clerk a report containing a statement of the following facts:

1. The amount of money on hand at the beginning of the preceding fiscal year, and the receipts from all sources during such year.

2. An itemized statement of the amount paid out during such year and the balance on hand.

3. The outstanding indebtedness of the department, either bonded or otherwise, separately stated.

4. The estimated deficiency in the amount necessary to pay principal or interest or the expenses of the department during the next fiscal year, after applying thereto the probable amount available from the park or cemetery fund.

5. The improvements made during such preceding year and the general condition of the park or cemetery.

6. The number of interments made since its last annual report.

7. Such other facts as the board deems important for the information of the village, together with such recommendations concerning the department as may be deemed proper.

This section was derived from Village Law, L. 1897, ch. 414, § 296. It was amended by L. 1909, ch. 469, § 1.

Auditing and paying fraudulent claims and receiving proceeds thereof: see PENAL LAW, §§ 1863, 1864.

Falsification of accounts by public officers: see PENAL LAW, § 1865.

§ 297. *[Powers of park commissioners; limitation of expenditures.] The board of park commissioners has the supervision and control of all village parks and the care and maintenance of the same. They shall keep any village park in repair and for that purpose shall have the use of such funds as may be appropriated by the village board therefor but the expenses thereof in any year of a village of the fourth class shall not exceed five hundred dollars;

* This section was enacted without a heading. Section head has been added for facility of reference.

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in a village of the third class, one thousand dollars; in a village of the second class, fifteen hundred dollars, and in a village of the first class, two thousand dollars. If the estimated expense for maintaining the same in any one year will exceed the above amounts such estimated expense can only be incurred when authorized by a proposition adopted at an election.

New. Added by L. 1909, ch. 469, § 2.

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ARTICLE 13

Reincorporation

Section 300. Reincorporation of special village under this chapter.
301. Notice and conduct of election.
302. Certificate of election.
303. Effect of reincorporation.
304. Determination of number of trustees.
305. Reincorporation of certain villages confirmed.

§ 300. Reincorporation of special village under this chapter. A village incorporated by special law and subject to its provisions may be reincorporated under this chapter by adopting a proposition therefor. Such a proposition may be submitted at an annual election or at a special election to be called for that purpose.

The board of trustees of such a village may, upon its own motion, and shall, upon the petition of twenty-five electors assessed upon the last assessment-roll of the village, cause to be submitted at a village election a proposition for such reincorporation. The ballots to be used at such an election may be written or printed, and shall contain either the words " For the reincorporation of the village of (naming it) under the village law," or "Against the reincorporation of the village of (naming it) under the village law."

A proposition for the reincorporation of a village under this article shall not be submitted at an election, either annual or special, during the months of February or March.

This section was derived from Village Law, L. 1897, ch. 414, § 300.

Time of submission.— Upon the presentation of a petition for the reincorporation of a village under the present section the trustees are bound to move within a reasonable time and use all reasonable efforts for a prompt and fair submission of the question, and a delay of eight months in submitting the proposition is not within the right of the trustees to impose. People v. Daley, (1903) 89 App. Div. 156, 85 N. Y. S. 429.

Frequency with which proposition may be submitted.— There is no limitation in the statute upon the number of times the question of reincorporation may be submitted, and it follows that the question must be submitted whenever a petition is made therefor in accordance with the present section. Op. Atty.-Gen. (1902) 225.

§ 301. Notice and conduct of election. If the proposition is to be submitted at an annual election notice thereof shall be given by the board of trustees by posting notices in five public places in the village, and publishing the same in each newspaper actually printed therein, if any, at least twenty days before such annual election. If it is to be submitted at a special election notice of such election and of the submission of such proposition thereat

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shall be given in the same manner and for the same time as for the submission of such a proposition at an annual election. Such a special election shall be held by the same officers and conducted and the result canvassed in the same manner as provided by law for an annual election in such village.

This section was derived from Village Law, L. 1897, ch. 414, § 301.

Qualification of voters.— It has been held that the persons who may vote upon a proposition to reincorporate under the Village Law a village already incorporated under a special law are those who would have a right to vote under the special law. Matter of Sag Harbor, (1900) 32 Misc. 624, 67 N. Y. S. 574. See also Op. Atty.-Gen. (1909) 871; Op. Atty.-Gen. (1902) 212; Op. Atty.-Gen. (1897) 332.

As to qualification of voters upon proposition to incorporate a village, see supra, § 12 note.

As to qualification of voters upon village propositions generally, see supra, § 41 note.

Right of women to vote.— It was said in Ward v. Kropf, (1910) 120 N. Y. S. 476, that the statute does not seem to have expressly conferred the right upon women to vote on the question of the reincorporation of a village, and that it would seem to be consistent with the trend of decisions to hold that they had no right to vote on that question. But see Constitution, art. 2, § 1, amendment of 1917.

§ 302. Certificate of election. The officers conducting such election shall make a certificate thereof, showing the whole number of votes cast upon such proposition, and the number in favor of and against it, and within twenty-four hours after the closing of the polls of such election, must file such certificate in the office of the village clerk. If the proposition be adopted the village clerk shall within ten days after the election file a certified copy of such certificate in the office of the clerk of each county in which any part of such village is situated, and also in the office of the secretary of state.

This section was derived from Village Law, L. 1897, ch. 414, § 302.

Review of election.— It has been held that the statute confers upon the county court of the county in which the village is situated no jurisdiction to hear and determine an appeal from a certificate filed by the village election officers relative to reincorporation; that such an election must be reviewed in the same manner as other elections are reviewed. Matter of Sag Harbor, (1900) 32 Misc. 624, 67 N. Y. S. 574.

§ 303. Effect of reincorporation. If the proposition be adopted, the reincorporation of the village under this chapter shall take effect immediately upon the filing of the certificate of election in the office of the village clerk. From and after such filing such village shall be deemed incorporated under this chapter, and shall possess all the powers, enjoy all the privileges, and be subject to all the liabilities, in all respects and for all purposes, as if it had been originally incorporated thereunder. Such reincorporation shall not affect any action then pending or cause of action existing by or against such village, nor property rights thereof under the provisions of any law to which it was then subject. The officers

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of the village in office when the reincorporation takes effect shall continue to hold their offices until noon on the Monday following the date when the next annual election in such village may be held under this chapter, at which time their terms of office shall expire.

This section was derived from Village Law, L. 1897, ch. 414, § 303.

§ 304. Determination of number of trustees. A special election to determine the number of trustees to be elected in such village at the first annual election after such reincorporation shall be held in the month of February next preceding, in the manner and upon the notice prescribed by article three of this chapter. If the number of trustees be not determined before such first annual election the village shall elect two trustees. At such first annual election after reincorporation one-half of the trustees shall be elected for one year, and one-half for two years.

This section was derived from Village Law, L. 1897, ch. 414, § 304.

§ 305. Reincorporation of certain villages confirmed. All villages in the state incorporated by special laws and subject to their provisions which have attempted to reincorporate under the provisions of chapter four hundred and fourteen of the laws of eighteen hundred and ninety-seven and the acts amendatory thereof, between July one, eighteen hundred and ninety-seven, and January one, *ninteen hundred and four, and which have held their elections, elected their officers and conducted their municipal affairs under or agreeably or substantially under or substantially agreeable to the provisions of said law for the period of one year, or longer, are hereby declared to be regularly and duly incorporated villages under this chapter; and, so far as any defects, omissions or irregularities in the proceedings for such reincorporation affect their annual and special elections and meetings and their acts and proceedings at such elections and meetings and the election of their presidents and their other village officers and all the acts and proceedings of their boards of trustees and all the acts and proceedings of their officers, their said annual and special elections and meetings and their acts and proceedings at said elections and meetings and the election of their presidents and trustees and their other village officers and all the acts and proceedings of their boards of trustees and all the acts and proceedings of their officers, are hereby declared to be legal and valid; and so far as any defects, omissions or irregularities in their proceedings for such reincorporation affect the title to the offices held by their presidents, trustees and other officers, their said presidents, trustees and other officers are hereby declared to be legally holding

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and entitled to their offices de jure until the expiration thereof as provided by this chapter.

This section shall not affect any action or proceeding now pending in any court.

This section was derived from L. 1905, ch. 259, §§ 1, 2.

Curative act relating to Brockport.— It was held in People v. Sutphin, (1901) 166 N. Y. 163, 59 N. E. 770, modifying order 53 App. Div. 613, 66 N. Y. S. 49, that chapter 84 of the Laws of 1873, entitled "An act in relation to the village of Brockport," cured all irregularities in the reincorporation of that village.

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ARTICLE 14

Provisions Applicable to Certain Villages

Section 310. Application.
311. President's term of office.
312. Board of police commissioners.
313. Consolidation of boards.
314. Abolition of boards.
315. Treasurer's additional duties.
316. Salary of the president and trustees.
317. Tax levy.
318. Contract for lighting.
319. Collection of taxes by treasurer.
320. Borrowing money.
321. Submission of propositions.

§ 310. Application. This article shall apply to all villages whose population is shown by the last state census to exceed fourteen thousand inhabitants.

This section was derived from Village Law, L. 1897, ch. 414, § 339-a, as added by L. 1906, ch. 34, § 1.
Effect of chapter on special villages: see infra, § 380.

§ 311. President's term of office. In every such village the term of office of the president shall be two official years.

This section was derived from Village Law, L. 1897, ch. 414, § 339-b, as added by L. 1906, ch. 34, § 1.
Section 311 of the Village Law of 1897 is now covered by section 330.

§ 312. Board of police commissioners. Every such village by adopting a proposition therefor at an annual election may establish or abolish a separate board of police commissioners composed of five members, who must at the time of their election and during their term be the owners of property assessed upon the last preceding assessment-roll of the village. If the proposition to establish such board be adopted, the board of trustees at its next annual meeting shall appoint such commissioners for the terms of one, two, three, four and five years respectively; and at each annual meeting thereafter the board of trustees shall appoint one commissioner for the full term of five years. Said board shall have all the powers and is subject to all the liabilities and must perform all the duties of the president and board of trustees so far as the same relate to the police or police department, and to the exclusion of said president and board of trustees.

This section was derived from Village Law, L. 1897, ch. 414, § 339-c, as added by L. 1906, ch. 34, § 1.
Section 312 of the Village Law of 1897 is now covered by section 331.

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§ 313. Consolidation of boards. In every such village the powers and responsibilities of one or more boards of commissioners may be conferred upon an existing board by the adoption of a proposition therefor at an annual election and thereupon such board shall possess all the powers and responsibilities of such other board or commission consolidated with it, until such consolidation be abolished by adopting a proposition therefor at an annual election.

This section was derived from Village Law, L. 1897, ch. 414, § 339-d, as added by L. 1906, ch. 34, § 1.
Section 313 of the Village Law of 1897 is now covered by section 332.

§ 314. Abolition of boards. A separate board of commissioners or a consolidation of one or more boards of commissioners may be abolished by adopting a proposition therefor at an election. The abolition of such a board or consolidation shall take effect immediately upon filing a certificate showing the adoption of the proposition. Within ten days after such certificate is filed, the abolished board shall deliver to the clerk of the village its records, books and papers; and shall also within the same time deliver to the treasurer all funds, and to the president all other property in its possession or under its control, belonging to such department.

This section was derived from Village Law, L. 1897, ch. 414, § 339-e, as added by L. 1906, ch. 34, § 1.
Section 314 of the Village Law of 1897 is now covered by section 333.

§ 315. Treasurer's additional duties. In every such village the treasurer shall, if required by the board of trustees, maintain an office in a place designated and furnished by the board of trustees, and be in attendance thereat on such days and during such reasonable hours of the day as the board of trustees may from time to time designate.

This section was derived from Village Law, L. 1897, ch. 414, § 339-f, as added by L. 1906, ch. 34, § 1.
Section 315 of the Village Law of 1897 is now covered by section 334.

§ 316. Salary of the president and trustees. Every such village, by adopting a proposition therefor by a majority vote of the taxpayers whose names appear on the last assessment-roll at any annual or special election, may fix a compensation for the president not exceeding the sum of six hundred dollars per annum and for each of the trustees thereof not exceeding the sum of three hundred dollars per annum, which shall continue until amended or abolished by adopting a proposition therefor by voters of the same eligibility at an annual or special election.

This section was derived from Village Law, L. 1897, ch. 414, § 339-g, as added by L. 1906, ch. 34, § 1, and amended by L. 1907, ch. 38, § 1.
Section 316 of the Village Law of 1897 is now covered by section 335.

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§ 317. Tax levy. In every such village the board of trustees may include in the levy of taxes for the current fiscal year, in addition to the items specified in section one hundred and ten of this chapter, such sum as the board deems necessary to meet expenditures from the light fund for the current year, not exceeding three-tenths of one per centum of the total valuation of the property assessed upon the annual assessment-roll of the last preceding year; and such additional sums as shall be deemed necessary to meet all other expenditures of the village for the current fiscal year, not exceeding one-tenth of one per centum of such total valuation.

This section was derived from Village Law, L. 1897, ch. 414, § 339-h, as added by L. 1906, ch. 34, § 1.
Section 317 of the Village Law of 1897 is now covered by section 336.

§ 318. Contract for lighting. In every such village the board of light commissioners may contract in the name of the village, with an individual or corporation, for lighting the streets, public grounds and public buildings of the village by gas, electricity or other substance; but such contract shall not be made for a longer period than five years, nor at an expense for each fiscal year exceeding three mills on every dollar of taxable property of the village as appears on the last preceding village assessment-roll, unless authorized at a village election.

This section was derived from Village Law, L. 1897, ch. 414, § 339-i, as added by L. 1906, ch. 34, § 1.
Section 318 of the Village Law of 1897 is now covered by section 337.

§ 319. Collection of taxes by treasurer. In every such village which has no collector, the tax roll and warrant shall be delivered to the treasurer of the village, and the provisions of this chapter, relating to the delivery of a tax roll and warrant, the extension of the time for the collection of taxes, the fees for collecting, and the return of such tax roll and warrant, apply to the roll and warrant so delivered to a treasurer, so far as practicable. Upon the delivery of the roll and warrant to the treasurer, he shall publish in each newspaper actually printed in the village, once in each week for four consecutive weeks, and post in five public places in the village, a notice that such tax roll and warrant have been left with him for the collection of the taxes therein levied, and designating one or more convenient places in the village where he will receive taxes for thirty days after the first publication and posting of said notice, from nine o'clock in the morning until four o'clock in the afternoon. The treasurer shall attend at the time and place specified in said notice, and shall proceed to collect the taxes and shall possess all the powers of a

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town collector. The fees for collecting said taxes belong to the village and the treasurer must account therefor.

This section was derived from Village Law, L. 1897, ch. 414, § 339-j, as added by L. 1906, ch. 34, § 1.
Section 319 of the Village Law of 1897 is now covered by section 338.

§ 320. Borrowing money. In every such village money may be borrowed at any time in the fiscal year after the first day of April and prior to the annual levy of taxes, but not exceeding one per centum of the total valuation of the property assessed upon the annual assessment-roll of the last preceding year, or in anticipation of taxes already levied for the current fiscal year, but not in excess of the amount thereof after deducting any sums borrowed prior to said tax levy, and it must be payable within such year.

This section was derived from Village Law, L. 1897, ch. 414, § 339-k, as added by L. 1906, ch. 34, § 1.
Section 320 of the Village Law of 1897 is now covered by section 339.

§ 321. Submission of propositions. In every such village the board of trustees shall, at least five days before the annual election, cause to be published at least once in the official paper, if such paper is published in the village, and to be published in said paper at least twice thereafter and prior to said election and to be conspicuously posted in at least ten public places in said village, a notice setting forth in full all propositions to be voted upon.

This section was derived from Village Law, L. 1897, ch. 414, § 339-l, as added by L. 1906, ch. 34, § 1.
Section 321 of the Village Law of 1897 is now covered by section 340.

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*ARTICLE 14-A.

Provisions Applicable to a Village Embracing the Entire Territory of a Town.

Section 322. Application.
323. Succession of powers and duties.
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§ 322. Application. This article shall apply to any village which has been or may hereafter be incorporated to embrace the entire territory of a town.

New. Added by L. 1915, ch. 305, § 1.
Section 322 of the Village Law of 1897 is now covered by section 341.

§ 323. Succession of powers and duties. In every such village, all the powers and duties imposed by law upon the town board of the town or upon any officer of the town or commissioners or boards of any district in relation to any water district, or any lamp or streeting lighting district, or any sewer district, or any fire district, created or organized under the provisions of the town law, shall devolve and are hereby imposed upon the board of trustees of such village, and all contracts in relation to such districts or any improvements therein shall be performed and completed by the said board of trustees.

New. Added by L. 1915, ch. 305, § 1.
Section 323 of the Village Law of 1897 is now covered by section 342.

§ 324. Water districts. In every such village any water districts created or organized under the provisions of the town law, shall continue and the board of trustees shall be and they are hereby vested with the full management and control of such districts, and the water systems constructed therein, and the assessment of the cost and expenses thereof, which water districts shall until discontinued in the manner hereinafter provided, be managed, controlled and operated and may be extended or enlarged, by said board of trustees in the manner provided in the town law; provided, however, that if any such village shall adopt a general

* This article was added by L. 1915, ch. 305, § 1.

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village water system, such water district or districts may be discontinued upon the adoption of a proposition for such discontinuance at a village election. [1]In every such village any water supply district organized under the town law or under the transportation corporations law shall continue and the boundaries thereof may be extended or modified by the board of trustees, or the supply board of trustees may establish one or more additional water supply districts in said village, by filing a certified copy of a resolution describing the bounds thereof as extended or modified, or as established by the board of trustees, in the office of the village clerk; and may contract with any corporation in the name of the village for the delivery of a supply of water for fire or other public purposes to such districts and the whole village shall be bound by such contract, but the rental or expenses thereof shall annually, and in the same manner as other expenses of the village are raised, be assessed, levied upon and collected only from the taxable property within such water supply districts respectively. No such contract shall be made for a longer period than five years, nor for an annual expense exceeding three mills upon each dollar of taxable property within such water supply districts.

New. Added by L. 1915, ch. 305, § 1. It was amended by L. 1917, ch. 585, § 1. The amendment is shown in the footnote.
Section 324 of the Village Law of 1897 is now covered by section 343.

§ 325. Lamp or street lighting districts. In every such village any lamp or street lighting districts created or organized under the provisions of the town law, shall continue and the board of trustees shall be and they are hereby vested with the full management and control of such districts, and the lighting system thereof, and the assessment of the cost and expenses of such lighting, which lighting district shall until discontinued in the manner hereinafter provided, be managed, controlled and operated and may be extended or enlarged, by said board of trustees, in the manner provided in the town law; provided, however, that the board of trustees of such village may, in its discretion, by resolution, discontinue any such lighting district, in which case the provisions of the village law in relation to street lighting shall apply to any such village.

New. Added by L. 1915, ch. 305, § 1.
Section 325 of the Village Law of 1897 is now covered by section 347.

§ 326. Sewer districts. [Repealed.]

This section which was added to Village Law by L. 1915, ch. 305, § 1, was specifically repealed by L. 1917, ch. 587, § 1, and a new section 326 relating to "sewer districts" was added. See section 326 infra.

[1] Remainder of section new.

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§ 326. Sewer districts. (1) In every such village any sewer district created or organized under the provisions of the town law shall continue, and the board of trustees shall be and they are hereby vested with the management and control thereof, and of the sewer systems constructed or to be constructed therein, and of the assessment of the costs and expenses thereof, which such sewer districts shall be managed, and the costs and expenses thereof shall be assessed, as herein provided.

(2) In case a system of sewers to serve the said district shall have been authorized as provided in the town law and maps and plans therefor shall have been approved by the state department of health and by the conservation commission, the board of trustees may construct and complete the sewers so authorized and may make extensions thereof and may modify and change the plans thereof, by resolution at any regular or at any special meeting called for the purpose; provided notice that the board of trustees will act upon the question of authorizing the construction of specified portions of such sewer system, or specified extensions thereof, or upon specified modifications thereof, at a time and place to be stated therein, shall have been posted in at least five public places in the said sewer district and shall have been published in the official paper, or if there be no official paper, in such newspaper published in the county as the board of trustees may select, at least ten days before such meeting.

(3) In case additional construction under the provisions of the preceding subdivision hereof shall be so authorized, the board of trustees shall estimate the cost thereof and may issue the bonds or other obligations of the village to the amount thereof, which bonds or other obligations shall be a village charge. Said bonds or other obligations shall be payable within thirty years in annual instalments, commencing not more than five years from the date thereof, shall bear interest at a rate not exceeding five per centum per annum, and shall be sold on public notice in the manner prescribed by section one hundred and twenty-nine of the village law. Any moneys advanced from the general fund of such village for the payment of the principal and interest of said bonds or other obligations shall be reimbursed from the assessments hereinafter provided.

(4) In case the board of trustees shall authorize the construction of any such extension or extensions to the sewer system, which have not been approved by the state board of health and by the conservation commission, or in case the board of trustees shall modify or change the plans for the construction and completion of the said sewer system or any portion thereof or of any such extensions which have theretofore been approved by the state board of health and by the conservation commission, maps and plans of such extension or extensions and of the portions of the system so modified or changed, prepared by a competent engineer

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under the authority and direction of the board of trustees, shall be approved by the state board of health and the conservation commission as required by law before the same shall be constructed.

(5) The board of trustees shall advertise for proposals for the construction of such extension or extensions according to such maps and plans either under an entire contract or in parts, or sections, as the board may determine, and such advertisement shall be published once in each of two successive weeks in the official paper, or if there be no official paper then in such newspaper published in the county as the trustees may select. The board of trustees may accept or reject any or all proposals and shall let the contract to the lowest responsible bidder. The board of trustees may require bidders to give a bond or other security to be forfeited to the village in case the bidder to whom the award is made shall refuse or neglect to enter into the required contract, and may require the successful bidder to give a bond or other security in an amount to be fixed by the board of trustees conditioned upon the faithful performance of the contract. Such contracts shall be executed in the name of the village in duplicate and one copy thereof shall be filed in the office of the village clerk.

(6) The board of trustees may employ engineers, and such inspectors as may be necessary, to prepare maps, plans, specifications and estimates, and to supervise the construction, and may fix their compensation which, together with the cost of preparing the maps, plans and specifications, and the cost of the necessary real property or interest therein, shall be treated as a part of the expense of construction.

(7) If the board of trustees are unable to agree with the owners for the purchase of any real property or any interest therein necessary for the construction of the said sewer system or of any extension or extensions thereto they may acquire the same by condemnation, in the name of the village.

(8) The board of trustees during the first month of the fiscal year shall determine by resolution the amount of money required to pay the principal and interest of all outstanding bonds issued to pay the cost of constructing the sewer system, and the extensions thereto, maturing during such fiscal year, and the cost of maintaining and operating the same, and all other lawful charges against the said sewer system during such year, and shall on or before the first Tuesday of the fourth month of the fiscal year, if a village of the first or second class, and on or before the first Tuesday of the third month of the fiscal year, if a village of the third or fourth class, assess the amount thereof, from year to year, upon the lands within the sewer district in proportion as nearly as may be to the benefit which each lot or parcel shall derive therefrom, and shall enter such assessments in a book suitable for the purpose, which shall show the section, block and lot number, or other suitable description of each piece or parcel of

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land in the said sewer district, with the amount assessed against each such piece or parcel of land respectively. Thereafter the provisions of the village law relating to the filing, correction, completion and review of the village assessment-roll, and relating to the levy, collection and lien of village taxes shall apply to the filing, correction, completion and review of such sewer assessment and to the levy, collection and lien thereof, as nearly as may be, except that the powers and duties of the assessors with respect thereto shall devolve upon and be performed by the board of trustees.

(9) In case there be an unexpended balance remaining after the completion of any contract or contracts for the construction of any such sewer system or of any extension or extensions thereto the board of trustees shall, by resolution, use the same or any part thereof for the payment of the cost of constructing extensions to such sewer system in said district or for the purpose of retiring outstanding bonds issued to pay for the construction of such sewer system or extensions thereto.

(10) The board of trustees shall adopt rules and regulations to govern the maintenance and use of the sewer system and shall therein fix the amount of fees that shall be chargeable to individuals or property owners who may wish to enter or use the sewer system, which fee shall be sufficient in amount to pay for the cost of inspection, and may prescribe the terms and conditions upon which connections may be made therewith, and the manner in which the same shall be made, and may provide reasonable penalties for the violation of such rules and regulations to be collected at the suit of the village for the use of the sewer district.

(11) The board of trustees may cause notice to be published in the official paper and posted in at least ten conspicuous public places in the district, requiring the owners or occupants of all property fronting or abutting on any street or portion thereof in the town in which any public sewer is about to be laid or is being laid or has been laid to make and lay connection pipes to and from the sewer mains in such street or any portion thereof in front of each separate piece of property, within such times and in such manner and under such inspection as such board shall prescribe; and whenever any such owner or occupant shall have made default in making such connection as directed in and required by such printed notice therefor, in the manner and within the time specified, such board shall have power and authority to make, extend and complete the same to the property line of the lands and premises so owned or occupied opposite thereto and in front thereof, and to connect the same with an existing pipe in front thereof, and the actual expense thereof, including all labor done and materials used in doing and completing the same, shall be assessed by the board upon each separate piece of property

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opposite which the same shall be done and completed. Such assessments shall be made and may be collected in the manner specified in section one hundred and sixty-eight of the village law, and when collected shall be for the use of the sewer district. Such assessments shall be deemed to be assessments for sewers within the meaning of section one hundred and thirteen of the village law.

(12) In every such sewer district it shall be the duty of the owners, or if the owner be a non-resident of the district, of the occupants, of premises which can be connected with any portion of the sewer system at any time constructed, and which premises are occupied or used for residential, business, or other purposes in which sewage matter originates, to connect such premises with the said sewer system under the rules and regulations adopted by the board of trustees relating thereto, and in case such owner, or occupants, shall fail or neglect to make and complete such connections within thirty days from the personal service upon him of a certified copy of a resolution of the board of trustees requiring such connection or connections to be made he shall be liable to a fine not exceeding fifty dollars in amount and shall, in addition thereto, be liable to a fine not exceeding ten dollars in amount for each day during which such default shall continue after the expiration of such period of thirty days, to be collected at the suit of the village for the use of the sewer district. In case the cost of such connection shall be paid by the occupant he may recover the same from the owner or may deduct the same from any sums due or to become due from him to such owner.

(13) Nothing herein shall prevent the construction of extensions to such sewer system in accordance with the provisions of article eleven of the village law.

New. Added by L. 1917, ch. 587, § 1.
Section 326 of the Village Law of 1897 is now covered by section 348.

§ 327. Highways and streets. If prior to the incorporation of any such village, the voters of any such town may have authorized the issuance of town bonds for the purpose of laying out, grading, paving or otherwise improving or constructing sidewalks in such town, the power to issue such bonds, to make the improvement for which the same were voted, and to receive and apply the proceeds thereof, shall devolve upon and be vested in the board of trustees of every such village, and such board of trustees without any further election or authority shall be and are hereby authorized and empowered to issue the bonds of such village to the amount, bearing interest and upon the terms, maturities and conditions so authorized by vote of such town, and to levy, assess and collect a tax upon the taxable property of such village in the same manner as other taxes of such village are levied, assessed and collected,

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sufficient to pay the interest on said bonds as the same shall accrue and sufficient also to provide for the payment of the principal thereof at maturity. If prior to the incorporation of any such village, town bonds shall have been issued pursuant to any vote of the town for such purposes, the proceeds thereof, or any part of such proceeds that may not have been expended and applied shall be paid over to the said village to be applied and expended under the direction of the board of trustees, in the making and construction of such improvement.

New. Added by L. 1915, ch. 305, § 1.
Section 327 of the Village Law of 1897 is now covered by section 350.

§ 328. Fire districts. In every such village any fire districts created or organized under the provisions of the county law, shall be merged in and consolidated with such village and shall become a part of such village for fire protection purposes and all buildings, engines, fire apparatus, and other property belonging to such fire district shall be vested in such village and maintained and administered by it as a part of the fire protection system thereof. All the powers and duties of the commissioners of such fire district shall be and are hereby devolved upon and transferred to the board of trustees of such village. For the purpose of paying the principal and interest of any bonds of any such fire district which may be outstanding and unpaid at the date of the incorporation of any such village, the board of trustees of such village shall levy, assess and collect upon all the taxable property in such village, a tax sufficient to pay the interest thereof as the same accrues and sufficient also to provide for the payment of the principal of such bonds at maturity.

New. Added by L. 1915, ch. 305, § 1.
Section 328 of the Village Law of 1897 is now covered by section 351.

§ 329. Taxation and assessment. In every such village all property shall be assessed for taxation for state, county, town, village and district purposes, in the manner provided by the laws applicable to the county in which such village may be situated.

New. Added by L. 1915, ch. 305, § 1.
Section 329 of the Village Law of 1897 is now covered by section 352.

§ 329-a. Obligations and property. The outstanding obligations, contracts and bonds of any such town or of any district therein, incurred, made or issued for the purpose of improving the highways thereof, or constructing overhead or undergrade crossings, or constructing sidewalks or for sewers or sewer districts* purposes, or for water or water district purposes, or for fire district purposes, shall devolve upon and be assumed by any such village and the board of trustees of any such village, is

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hereby authorized and empowered and it shall be its duty to provide for the payment and discharge of such obligations, contracts and bonds by taxation or assessment of taxes in the same manner as the board of supervisors, town board, or supervior or officers of such town, or of any district therein are or may be authorized to provide therefor or by taxation of all the taxable property in such village in any case in which by virtue of any provision of this act or of any other statute such obligations, contracts or bonds are or may be made a general village charge. All moneys, credits and property of the said town, including any moneys to which said town may be entitled as state aid under the general highway law, and all the moneys, credits and property of any sewer district, water district, fire district or lamp or street lighting district thereof, shall pass to and become the property of any such village, and shall be paid over and delivered to such village by the several custodians thereof upon demand, and shall be used and applied by the said village for the purposes for which the same could lawfully have been used by the said town or by any such district therein. In every such village all taxes and assessments levied or assessed before incorporation upon the taxable property in the said town or upon the taxable property in any water district, fire district, lighting district or sewer district therein for town or district purposes, shall, when collected, be paid over to such village and used by such village for the purposes for which the same were levied and assessed.

New. Added by L. 1915, ch. 305, § 1.

§ 329-b. Miscellaneous town charges. In every such town, the town board in the month of December in each year shall present to the board of trustees of such village a statement of all town charges audited and allowed by the said town board, or by the board of town auditors, for town purposes other than for purposes which by this article have been devolved upon such village, and the board of trustees of such village shall levy, assess and collect the amount thereof in the next tax levy in such village, and when collected, the same shall be paid to the several persons lawfully entitled thereto.

New. Added by L. 1915, ch. 305, § 1.

§ 329-c. Officers. In any such village a person otherwise qualified to hold a village office shall not be disqualified by reason of holding a town office, whether elective or appointive. In every such village there shall be four trustees, to be elected at the first village election, or at the next election after this article takes effect.

New. Added by L. 1915, ch. 305, § 1.

* So in original.

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ARTICLE 15

Miscellaneous Provisions

Section 330. Notice; how served.
331. Notice; proof of posting; when publishing not required.
331-a. Compensation for printing.
332. Officer not to be interested in contracts.
333. Liability on unlawful contracts; failure to prosecute.
334. Competency of inhabitants as justices or jurors; undertakings not required of village.
335. Board may take testimony.
336. Woman may institute proceeding.
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348-a. Extension of boundaries by the annexation of territory belonging to the village.
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352. Consolidation of villages.
353. Filing certificates.
354. Effect of consolidation.
355. Number of trustees; wards; clerk.
356. First election in consolidated village.
357. Transfer of property to new village.
358. Reports of treasurers.
359. Establishment of disputed, unknown or uncertain boundaries.

§ 330. Notice; how served. Service of a notice under this chapter must be personal, if the person to be served can be found in the village, otherwise the notice may be served personally or by mail by depositing a copy thereof in the post-office of the village, addressed to such person at his last known place of residence.

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The provisions of the code of civil procedure relating to the service of a summons in an action in the supreme court, except as to publication, apply, so far as practicable, to the service of notices under this chapter.

If a person to be served can not with due diligence be found in the village where personal service is required, or his last known place of residence can not be ascertained, the county judge of a county in which any part of the village is situated may, by order, direct the manner of such service, and service shall be made accordingly.

A service on one of two or more joint tenants, or tenants in common, shall be sufficient notice to all for any purpose requiring a notice under this chapter.

This section was derived from Village Law, L. 1897, ch. 414, § 311.
Section 330 of the Village Law of 1897 is now covered by section 353.
Personal service of summons: see Code Civ. Pro., § 426.

§ 331. Notice; proof of posting; [1] when publishing not required. Whenever by this chapter or by a rule, by-law or ordinance made in pursuance thereof, a notice or ordinance is authorized or required to be posted, an affidavit thereof by the person posting the same is presumptive evidence of such posting. [2] Whenever by this chapter, or by a rule, by-law or ordinance made in pursuance thereof, a notice or ordinance is authorized or required to be published in any newspaper and the editor or proprietor of such newspaper, or other person in charge of the publication thereof, shall fail, neglect or refuse to print or publish such notice or ordinance in such paper, after the same shall have been offered or presented for publication, the supreme court or a justice thereof may by an order and upon sufficient reason therefor being shown, dispense with such publication in such newspaper, so refusing to publish such notice or ordinance, providing the notice or ordinance shall have been posted as required by this chapter.

This section was derived from Village Law, L. 1897, ch. 414, § 312. It was amended by L. 1915, ch. 401, § 1. The amendments are shown in the footnotes.
Section 331 of the Village Law of 1897 is now covered by section 354.
Affidavit of printer as presumptive evidence of publication: see Code Civ. Pro., § 926.
Cited.— This section was cited in Matter of Lynbrook, (1911) 142 App. Div. 487, 127 N. Y. S. 82, in connection with the construction of section 10, relating to notice of election on the question of incorporation of village. See supra, § 10 note.

§ 331-a. Compensation for printing. The compensation to be allowed to the printer of a newspaper for the publishing of an

[1] "when publishing not required" new.
[2] Remainder of section new.

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ordinance, notice or other advertisement required by this chapter to be published shall be fixed by the board of trustees of the village and shall not exceed the following rate:

Fifty cents per folio for the first insertion and twenty-five cents per folio for each subsequent insertion.

New. Added by L. 1915, ch. 401, § 2.

Application of section.— The present section applies only to notices required by statute to be published. It does not apply to the publication of a notice soliciting bids for the construction of village water works. 9 St. Dept. Rep. 475.

Technical paper as newspaper.— A purely technical paper, not printing general or local news and not having general circulation, is not a newspaper within the meaning of the statute. 9 St. Dept. Rep. 475.

§ 332. Officer not to be interested in contracts. An officer shall not be directly or indirectly interested in a contract which he or a board of which he is a member is authorized to make on behalf of the village; nor in furnishing work or materials; nor shall such an officer act as such in any matter or proceeding involving the acqusition of real property then owned by him for a public improvement.

This section was derived from Village Law, L. 1897, ch. 414, § 313.

Section 332 of the Village Law of 1897 is now covered by section 355.

Officials not to be interested in sales, leases or contracts: see PENAL LAW, § 1868.

Contracts between village board and its members.— Contracts between a village board of trustees and members of such board are illegal and unenforceable. Op. Atty.-Gen. (1911) 249; Op. Atty.-Gen. (1911) 256; Op. Atty.-Gen. (1908) 501.

Sale of supplies to village by firm of which trustee is a member.— It is illegal for a firm of which a village trustee is a member to sell supplies to the village, even though only the market price is charged therefor. Moran v. Barlow, (1911) 145 App. Div. 642, 130 N. Y. S. 432.

Violation of statute as ground for removal.— A village trustee who is guilty of a violation of the present section subjects himself to removal from the board even though he acts in good faith and in ignorance of the law. Matter of Smith, (1900) 63 N. Y. S. 1018.

Section as applicable to street superintendent.— It was held in Morrissey v. Saratoga Springs Sewer Commission, (1911) 73 Misc. 432, 133 N. Y. S. 365, that the provision of this section that an officer shall not be interested in a contract which he or a board of which he is a member is authorized to make on behalf of the village nor in furnishing work or materials was not applicable to the street superintendent of the village of Saratoga Springs, as to whom a different restriction contained in the law creating the office was applicable; and the street superintendent of Saratoga Springs might recover the reasonable value of the use of a horse and wagon furnished by him to convey the sewer, water and street commissioner about the village in the discharge of his duties.

Contract with village by corporation of which village treasurer is president. — It has been held that inasmuch as a village treasurer is not a member of the board of trustees and not authorized to make contracts on behalf of the village, a corporation of which the village treasurer is president may lawfully contract with the village for work upon its public improvements and collect payment therefor. Matter of Kenmore, (1908) 59 Misc. 388, 110 N. Y. S. 1008.

Cited.— This section was cited in Molloy v. New Rochelle, (1910) 198 N. Y. 402, 92 N. E. 94, 30 L. R. A. (N. S.) 126, affirming 123 App. Div. 642, 108 N. Y. S. 120, in connection with the question of the right to maintain an action against a municipality for loss of profits resulting from rejection of bid for a municipal contract.

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§ 333. Liability on unlawful contracts; [1] failure to prosecute. An officer or person who assumes to create a liability or appropriate money or property of the village without authority of law, or assents thereto, is personally liable for such debt, or to the village for such money or property. Each member of a village board present at a meeting thereof when such unlawful action is taken is deemed to have assented thereto, unless he expressly dissents and requests such dissent to be entered upon the minutes of the meeting. A village is not liable upon a contract made by an officer or board in the name or on behalf of the village, unless it is authorized by law. [2] If any person shall have heretofore appropriated or shall hereafter appropriate money or property of the village, contrary to law, and the facts in relation thereto are known to the board of trustees, and, after this section as amended takes effect, such board fail for thirty days to bring an action against such person to recover such money or property, each member of the board having such knowledge shall be guilty of a misdemeanor and liable to removal from office unless within such period of thirty days he shall file with the village clerk a written request, signed by him, requesting the bringing of such action or shall cause to be entered upon the minutes of a meeting of the board a motion made by him for the bringing of such action, or his vote in favor of such a motion.

This section was derived from Village Law, L. 1897, ch. 414, § 314. It was amended by L. 1914, ch. 274, § 1. The amendments are shown in the footnotes.

Section 333 of the Village Law of 1897 is now covered by section 356.

Prosecution of municipal officers for illegal acts: see GENERAL MUNICIPAL LAW, § 51 et seq.

Contractor bound to know limitations of village officers.— One who contracts with village officers is bound to know their limitations, and cannot recover against the village upon a contract made with the officers on behalf of the village which they have no authority to make. Parr v. Greenbush, (1878) 72 N. Y. 463; Garr v. Port Jervis, (1901) 57 App. Div. 122, 68 N. Y. S. 15. See also Op. Atty.-Gen. (1911) 340; Op. Atty.-Gen. (1909) 903.

§ 334. Competency of inhabitants as justices or jurors; undertakings not required of village. In an action brought by or against a village it shall not be an objection against the person acting as justice or juror in such action that he is a resident of the village or subject to taxation therein. It shall not be necessary for the village to give a bond, undertaking or security to appeal or to obtain a provisional remedy, or to take or prevent any other proceeding; but the village shall be liable to the same extent as if it had given the bond, undertaking or security otherwise required by or in pursuance of law.

This section was derived from Village Law, L. 1897, ch. 414, § 315.

Section 334 of the Village Law of 1897 is now covered by section 357.

[1] "failure to prosecute" new.

[2] Remainder of section new.

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§ 335. Board may take testimony. The board of trustees or the board of fire, water, light, sewer or cemetery commissioners may take testimony in a proceeding pending before it. The village clerk or any member of the board of trustees may administer oaths and take affidavits upon any claim or account against the village.

This section was derived from Village Law, L. 1897, ch. 414, § 316.

Section 335 of the Village Law of 1897 is now covered by section 358.

Before whom oaths and affidavits may be taken in special cases: see Code Civ. Pro., § 843.

Compelling attendance and testimony of witness: see Code Civ. Pro., § 852 et seq.

§ 336. Woman may institute proceeding. Where a right is granted by this chapter to institute a proceeding, make an application, present a petition, or take an appeal, such right may be exercised by an adult resident woman who owns property assessed upon the last preceding assessment-roll of the village.

This section was derived from Village Law, L. 1897, ch. 414, § 317.

Petition for incorporation.— An adult female who is a resident freeholder within the limits of the proposed village has a right to sign a petition for incorporation. Op. Atty.-Gen. (1898) 71.

Right to sign petition under section 56.—It was ruled in Op. Atty.-Gen. (1901) 198, that the present section did not authorize women to sign or present to the village trustees the petition referred to in section 56, supra.

§ 337. Security by contractors. All contracts under this chapter must be in the name of the village and the contractor must give adequate security to be approved by the officer or board with whom the contract is made.

This section was derived from Village Law, L. 1897, ch. 414, § 318.

Contractors not to assign contracts with municipality without its consent: see GENERAL MUNICIPAL LAW, § 86.

§ 338. Arrest of disorderly persons. A disorderly person under this chapter is subject to arrest, with or without process. A member of the police department or a peace officer may arrest a disorderly person without process for a violation of a village ordinance, committed in his presence. An officer making an arrest under this section shall immediately take the person arrested before the police justice of the village or a justice of the peace having jurisdiction, if such magistrate can be found, if not, he may detain the person arrested until such magistrate be found, not exceeding twenty-four hours. Unless the violation complained of is also a crime subject to indictment, the magistrate shall proceed forthwith to hear, try and determine such complaint, or may adjourn the hearing not to exceed five days, and in the meantime commit the offender to the lock-up or place of confinement or county jail until such day, or suffer him to go at large on executing a bond for his appearance on the adjourned day. On conviction

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the magistrate shall impose the penalty prescribed by the ordinance, and may also require the defendant to pay the costs of the proceeding. Unless the penalty and the costs, if imposed, be paid upon the conviction, the magistrate shall commit the defendant to the county jail of a county in which any part of the village is situated for a term not exceeding one day for each dollar of the penalty imposed.

This section was derived from Village Law, L. 1897, ch. 414, § 319, as amended by L. 1899, ch. 217, § 1.

Who are disorderly persons: see Code Crim. Pro., § 899.

Violation of motor ordinance merely imposing fine.— Where a village ordinance respecting the speed of motor vehicles merely imposes a fine and does not make a violation disorderly conduct a police officer who arrests a person for a violation of the ordinance and brings him before a magistrate is guilty of assault and false imprisonment and is liable in a civil action to recover damages therefor. Chapman v. Selover, (1916) 172 App. Div. 858, 159 N. Y. S. 632.

§ 339. Action to recover penalties. An action may be maintained by a village to recover a penalty imposed for a violation of an ordinance, and in such action an order of arrest may be issued and executed in the manner prescribed by the code of civil procedure for orders of arrests in justices' courts. In such action it shall be lawful to declare or complain generally for such penalty, stating the section of this chapter, or the ordinance, under which the penalty is claimed, and briefly setting forth the alleged violation. If the defendant in such action has no property out of which the judgment can be collected, the execution shall require him to be imprisoned in the county jail of a county in which any part of the village is situated, for a term not exceeding twenty days.

This section was derived from Village Law, L. 1897, ch. 414, § 320.

Action by private person for a penalty or forfeiture: see Code Civ. Pro., § 1893 et seq.

Order of arrest in justice's court: see Code Civ. Pro., § 2894 et seq.

§ 340. Discontinuance of action. If in an action brought by the village to recover a penalty for the violation of an ordinance, it appears from the complaint, or by the affidavit upon which an order of arrest is granted, that the person committing such violation is a disorderly person under this chapter, the magistrate may, upon the appearance of such person before him, by an order to be entered in his minutes, direct that all subsequent proceedings be taken in the same manner as if such person had been arrested without process as a disorderly person. Such subsequent proceedings shall be taken accordingly, and the action shall be thereupon discontinued.

This section was derived from Village Law, L. 1897, ch. 414, § 321.

Section 340 of the Village Law of 1897 is now covered by section 380.

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§ 341. Actions against the village. No action shall be maintained against the village for damages for a personal injury or an injury to property alleged to have been sustained by reason of the negligence of the village or of any officer, agent or employee thereof, unless the same shall be commenced within one year after the cause of action therefor shall have accrued nor unless a written verified statement of the nature of the claim and of the time and place at which such injury is alleged to have been received shall have been filed with the village clerk within sixty days after the cause of action shall have accrued. An action on such a claim shall not be commenced until the expiration of thirty days after it is presented.

This section was derived from Village Law, L. 1897, ch. 414, § 322.

Section 341 of the Village Law of 1897 is now covered by section 381.

Indemnity insurance insuring village against damages for personal injuries: see supra, § 89, subd. 27.

When municipal corporation not required to give security: see Code Civ. Pro., § 1990.

Necessity of notice precedent to action.— The service of a statement of the claim must precede the bringing of the action, and this essential requirement is not met if a copy of the notice is annexed to the complaint and served with it and comprises the only service made. Cotriss v. Medina, (1910) 139 App. Div. 872, 124 N. Y. S. 507, affirmed (1912) 206 N. Y. 713 mem. See to the same effect Arthur v. Glens Falls, (1892) 66 Hun 136, 21 N. Y. S. 81.

Purpose of requirement as to notice.— The statutory notice is required not only to enable the village to prepare its defense and ascertain the facts, but also to adjust and settle the claim before suit and thus save the expense of litigation. Butterfield v. State, (1917) 178 App. Div. 292, 165 N. Y. S. 3, reversed on other grounds 221 N. Y. 701.

Necessity of verification of statement.— Verification is one of the essential elements of the written statement of claim. Cotriss v. Medina, (1910) 139 App. Div. 872, 124 N. Y. S. 507, affirmed (1912) 206 N. Y. 713 mem.

Sending statement by mail.— The provision of the statute as to filing the statement of claim with the village clerk is not complied with by sending the statement by mail, unless it actually comes into the hands of the clerk within the statutory period. Karr v. Alfred, (1911) 148 App. Div. 435, 132 N. Y. S. 1088.

Provision as to time of bringing action as a condition or limitation.— The provision of the present section that the action against the village must be begun within one year after the cause of action accrued does not create a condition precedent but a limitation. Hence a plaintiff need not plead or prove compliance with this provision; it is a matter of defense. Arnold v. North Tarrytown, (1910) 137 App. Div. 68, 122 N. Y. S. 92, affirmed (1911) 203 N. Y. 536, 96 N. E. 1109. It has been held, however, that the provision of the present section that an action on the claim shall not be commenced until the expiration of thirty days after it is presented, is a condition precedent to the maintenance of the action, and it is essential that compliance therewith be pleaded and proved. Thrall v. Cuba Village, (1903) 88 App. Div. 410, 84 N. Y. S. 661. See also Rosenstock v. New York, (1904) 97 App. Div. 337, 89 N. Y. S. 948, affirmed (1905) 181 N. Y. 550 mem.

Failure of immature child to file notice.— A child five years of age is not precluded from bringing an action against a village for personal injuries by reason of a failure to file within the required time the notice specified in the present section; nor is such child prejudiced by the failure of its father or mother to file the notice. Murphy v. Ft. Edward, (1915) 213 N. Y. 397, 107 N. E. 716, Ann. Cas. 1916C 1040, affirming 159 App. Div. 471, 144 N. Y. S. 451, which overruled on reargument 158 App. Div. 342, 143 N. Y. S. 378.

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Physical condition as excusing delay in filing claim.— A failure to file the verified statement of a claim against a village within six months after the cause of action accrues as required by this section is not excused when it appears that the plaintiff instead of filing her claim as soon as she was in a mental and physical condition to do so, or within a reasonable time thereafter, delayed more than four weeks after she was able to transact business. Hungerford v. Waverly, (1908) 125 App. Div. 311, 109 N. Y. S. 438, reversing 56 Misc. 186, 107 N. Y. S. 291.

Filing copy of statement instead of original.— The provision of the statute requiring a statement of the claim to be filed with the village clerk is complied with although a copy instead of the original is filed. Scheer v. Perry, (1907) 119 App. Div. 606, 103 N. Y. S. 1048.

Sufficiency of statement of claim.— A statement filed with a village clerk as a condition precedent to the maintenance of an action for damages for a personal injury which reads: "I claim a cause of action against said Village of Dresden for $5,000 by reason of defects in a sidewalk in said village on Seneca street, and the following is a statement of such cause of action: On the 12th day of January, 1907, I was walking along said street and stepped upon a plank, which was loose, and my feet went into a hole," fails to give any description of the place where the accident happened, and hence is not a compliance with the requirements of the present section. Carson v. Dresden, (1911) 202 N. Y. 414, 95 N. E. 803, reversing 137 App. Div. 927, 122 N. Y. S. 1123. A similar statement as to the place of accident was held fatally defective in Rauber v. Wellsville, (1903) 83 App. Div. 581, 82 N. Y. S. 9. See also Lee v. Greenwich, (1900) 48 App. Div. 391, 63 N. Y. S. 160. A notice that the accident occurred at a point in the sidewalk of a designated street at a short distance from a certain cross street is not too indefinite, although the accident in fact occurred 228 feet from the cross street designated and only 96 feet from the next cross street, where the complaint served within six months states the place of the accident to be between the two cross streets. Romanowski v. Tonawanda, (1908) 127 App. Div. 814, 112 N. Y. S. 105. In Murphy v. Seneca Falls, (1901) 57 App. Div. 438, 67 N. Y. S. 1013, a notice of claim was held sufficiently definite which stated that the accident occurred "on or about April 10th, 1897," and that "the place where it occurred was on the west side of Bridge street in said village, between William street and Haigh street, and in front of or near the premises owned or occupied by James Gilmore."

Validity of special charter limitation.— It was held in Barry v. Port Jervis, (1901) 64 App. Div. 268, 72 N. Y. S. 104, that a provision of a village charter requiring notice of intention to commence an action against the village for damages for personal injuries and of the time and place the injuries were received to be filed with the village clerk within forty-eight hours after the cause of action accrued, was an unreasonable limitation. Similarly, it was held in Williams v. Port Chester, (1902) 72 App. Div. 505, 76 N. Y. S. 631, that a limitation in a village charter of thirty days from the time the injuries were received within which to present a claim for damages therefor to the president or treasurer of the village, was unreasonable and operated to deprive the injured person of his property (right of action) without due process of law. In this connection see Green v. Port Jervis, (1900) 55 App. Div. 58, 66 N. Y. S. 1042.

Waiver of non-compliance with statute.— It was held in McCarthy v. Far Rockaway, (1896) 3 App. Div. 379, 38 N. Y. S. 989, that the provision of a statute requiring as a prerequisite to the maintenance of an action against a village for damages that the claim should be filed with the village clerk or presented to the board of trustees within one year after the cause of action accrued, was a provision that a village could waive and must be deemed to have waived by not raising at the trial the point of non-compliance therewith.

A mere admission of the filing of a statement of claim without a specific denial of its sufficiency will not preclude a village from raising the question upon the trial. Carson v. Dresden, (1911) 202 N. Y. 414, 95 N. E. 803, reversing judgment 137 App. Div. 927, 122 N. Y. S. 1123; Bannon v. New York, (1912) 150 App. Div. 314, 134 N. Y. S. 1041. One of several village trustees cannot waive a condition upon which the liability of the

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village depends, and hence, a promise by one trustee to bring a claim for personal injuries before the board at its meeting and inform the claimant of the decision is not a waiver of her failure to file the verified claim required by the statute. Hungerford v. Waverly, (1908) 125 App. Div. 311, 109 N. Y. S. 438, reversing 56 Misc. 186, 107 N. Y. S. 291.

Amendment of complaint.— Where the notice of claim states that the accident occurred on the 16th of June, and the complaint in the action states that it occurred on the 17th of June, and the proof shows that it occurred on the 16th, it is within the discretion of the court to permit the plaintiff to amend the complaint to conform to the proof. Ladrick v. Green Island, (1905) 103 App. Div. 71, 92 N. Y. S. 622. In this connection see Northrup v. Sidney, (1904) 97 App. Div. 271, 90 N. Y. S. 23.

Application to village created by special charter.— The provisions of the present section by virtue of section 380, infra, are applicable to a village created by a special charter which requires no notice to be given to the village of a claim for personal injuries. Freligh v. Saugerties, (1893) 70 Hun 589, 24 N. Y. S. 182. But this rule is not to be extended for the purpose of working injustice, and where, under the special charter of a village which declares it necessary to a cause of action for injuries received by reason of any defective condition of any sidewalk in the village that written notice of the injury shall be given within ten days after the injury, a notice stating what particular sidewalk was defective and fixing the date of the accident is sufficient although not verified. Haner v. Owego, (1915) 165 App. Div. 734, 151 N. Y. S. 109, affirming 146 N. Y. S. 475. Where a special village charter makes provision for actions for personal injuries against the village and for a particular notice thereof, the special charter provisions govern as against those of the general statute. Vinson v. Saratoga Springs Sewer, etc., Commission, (1913) 158 App. Div. 132, 142 N. Y. S. 598.

Application of section to suit to abate nuisance.— The present section has no application to a suit in equity against a village for relief from an alleged nuisance. Gerow v. Liberty, (1905) 106 App. Div. 357, 94 N. Y. S. 949.

Section as applicable to breach of contract.— The claims referred to in the present section are such as arise out of negligent acts on the part of the village, or its officers, by which physical injuries are caused to persons or property. It has no relation to actions founded upon a breach of contract. Bradley v. Union, (1914) 164 App. Div. 565, 150 N. Y. S. 107.

Incorporation of village as city after accident.— Where after an accident to a pedestrian caused by an alleged defect in a village street and after action brought the village incorporates as a city, the rights of the parties are to be determined under the Village Law. Romanowski v. Tonawanda, (1908) 127 App. Div. 814, 112 N. Y. S. 105.

§ 342. County court always open. The county court is always open for the hearing of an application or appeal under this chapter.

This section was derived from Village Law, L. 1897, ch. 414, § 323.

County courts generally: see Code Civ. Pro., § 340 et seq.

Jurisdiction to review as affected by act enlarging jurisdiction of police justices.— The amendment of 1911 (L. 1911, ch. 501) to section 186 (supra), giving village police justices the same jurisdiction as justices of the peace of a town in civil actions, left undisturbed the jurisdiction of the county court to review judgments rendered by police justices, and that court may review on appeal all cases arising under their enlarged jurisdiction. Nassau Garage v. Dorn, (1916) 158 N. Y. S. 534.

§ 343. Location of hospitals and pest-houses. A building or tent in a village shall not be used, occupied or maintained as a hospital or pest-house for the reception and care of public or private patients without the consent of the board of health of such village.

This section was derived from Village Law, L. 1897, ch. 414, § 324.

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Section 343 of the Village Law of 1897 is now covered by section 391.
Establishment of public general hospitals: see GENERAL MUNICIPAL LAW, § 126 et seq.
Local boards of health: see PUBLIC HEALTH LAW, § 20 et seq.

§ 344. Destruction of garbage. Within any village having over ten thousand inhabitants it shall be lawful for the trustees of such village to provide for the collection of and to cause to be consumed by fire or heat, and to prohibit the throwing, casting or deposit in any body or stream of water, or upon any ash heap or other place than such as may be provided by them within such village, any animal or vegetable refuse, dead animal, carrion, offal, swill or garbage. And it shall be lawful for the trustees of any such village to contract for the collection and for the consumption by heat or fire of any such refuse or other aforesaid matter, or for the purchase, maintenance and operation of any appliances for the collection and consumption thereof.

This section was derived from L. 1894, ch. 666, § 1.
Disposition of garbage and ashes: see supra, § 89, subd. 25.
Dumping grounds: see supra, § 89, subd. 23.

§ 345. Violation of ordinance a misdemeanor. Any person offending against any such provision as aforesaid made by any such trustees for the collection, or for the prohibition of the throwing, casting or deposit of any such refuse or other aforesaid matter shall be deemed guilty of a misdemeanor.

This section was derived from L. 1894, ch. 666, § 2.
Throwing refuse into public waters: see PENAL LAW, § 1759.

§ 346. Expense, how assessed and collected. Any expense incurred in any village, pursuant to the provisions of the last two sections, shall be annually raised as a part of the expenses of such village, and shall be levied, assessed and collected in the same manner that other expenses of such village are raised and shall be kept separate from the other funds of such village and shall be applied by the trustees thereof to the payment of such expense.

This section was derived from L. 1894, ch. 666, § 3 pt.

§ 347. Change of name. The name of a village may be changed upon the adoption of a proposition therefor at an annual election. The proposition must contain the proposed new name, and be accompanied by the written consent of the postmaster-general of the United States to such change. If the proposition be adopted a certificate thereof, attested by the president and clerk of the village, shall, within ten days after the election, be filed in the office of such clerk, in the office of the county clerk of each county in which any part of the village is situated, and also in the office of

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the secretary of state. The change of name takes effect upon the filing of the certificate in the office of the village clerk.

This section was derived from Village Law, L. 1897, ch. 414, § 325.

§ 348. Extension of boundaries. Territory not in a city or village may be annexed to an adjoining village. A petition for such annexation, describing the territory, stating the number of inhabitants thereof, and signed by a majority of the persons residing therein, if any, qualified to vote for town officers, and also by the owners of a majority in value of the property therein, assessed upon the last preceding town assessment-roll, may be presented to the board of trustees of such village. Each person signing the petition shall state opposite his name the assessed valuation of the property, if any, owned by him in such territory. Such petition must be verified by at least three persons signing the same to the effect that the petitioners constitute a majority of the qualified electors, if any, of such territory, and that the petition represents a majority in value of the property as above described. The petition must also be acknowledged in the same manner as a deed to be recorded.

Such petition must be accompanied by the written consent of a majority of the town board of the town in which such territory is situated, residing outside the village. Upon the presentation of such petition and consent, the board of trustees shall cause a proposition for such annexation to be submitted at [1] an annual or special election. If the proposition be adopted, the petition and consent and the certificate of the election shall be recorded in the village book of records. Such annexation takes effect upon the receipt by the village clerk of the certificate of the secretary of state under the seal of his office, certifying that he has received and placed on file in his office an outline map and description of the corporate limits of such village as extended, together with the date of filing the same in his office. Such outline map and description shall plainly show and describe the territory annexed. The date of filing such outline map and description, as shown by the certificate of the secretary of state, shall be deemed the date of the annexation of the territory to such village. And a certificate thereof containing a description of the territory annexed shall, within ten days after such election, be filed by the village clerk in the office of the clerk of the town and of the county in which such annexed territory is situated.

This section was derived from Village Law, L. 1897, ch. 414, § 326, as amended by L. 1907, ch. 607, § 2. It was amended by L. 1915, ch. 257, § 1. The amendment is shown in the footnote.

Sufficiency of petition.— When a petition is presented to the trustees of a village to submit to the electors thereof a proposition to extend the boundaries of the village, the right to have the petition granted depends upon

[1] "an annual or" in place of "a".

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whether it complies with the present section, and with section 3, supra, which prescribes that the description of the territory to be incorporated shall "suitably" describe "such district with common certainty." Where the description of the territory to be annexed leaves the exact boundaries doubtful and uncertain the petition is defective and the petitioner cannot compel the trustees to submit the proposition. People v. Patchogue, (1916) 217 N. Y. 466, 112 N. E. 169, affirming 171 App. Div. 347, 156 N. Y. S. 1096.

Cited.—This section was cited in Mills v. Sweeney, (1916) 219 N. Y. 213, 114 N. E. 65, affirming 175 App. Div. 914, 161 N. Y. S. 1135, in connection with the question of the validity of a city ordinance submitting to the electors certain questions of public policy.

§ 348-a. Extension of boundaries by the annexation of territory belonging to the village. If a village be the owner of uninhabited territory adjoining the village such territory may be annexed to the village if a majority of the members of the town board of the town in which such village is situated residing outside of the village consent thereto. Such consent shall be acknowledged in the same manner as a deed to be recorded, and shall be filed in the office of the village clerk. Upon the filing of such consent the board of trustees of such village may adopt a resolution annexing such territory without the presentation of a petition and without the adoption of a proposition at a village election as provided by the last preceding section. Such annexation shall take effect at the same time and subject to the same conditions as if the adoption of such proposition by the board of trustees were the adoption at a special election of a proposition for annexation as provided in the last preceding section.

New. Added by L. 1912, ch. 124, § 1.

§ 349. Diminishing boundaries. The boundaries of a village may be diminished by excluding from its corporate limits territory abutting upon a street which is not adjacent to nor benefited by either street or sidewalk improvements, electric lights, sewers, water-works system or fire protection, when any of such benefits, improvements or sytem have been completed in a village. A petition for diminishing the boundaries of a village by excluding territory therefrom may be presented to the board of trustees of such village. Such petition shall describe the territory sought to be excluded, and shall state the number of inhabitants thereof and the names of the owners and occupants of each parcel of land therein, and shall be signed and duly acknowledged by the owners of a majority in value of the real property sought to be excluded. Each person signing such petition shall state opposite his name the assessed valuation of all property owned by him in such territory, together with the amount of village taxes paid thereon during the preceding year. Such statement of assessed valuation and taxes paid shall be duly verified by each person signing such petition. The petition must also be accompanied by the consent in writing of the supervisor of the town in which the territory

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sought to be excluded is situated. Upon the presentation of such petition and consent, the board of trustees shall, if it appears that the exclusion of such territory will not decrease the number of inhabitants remaining in the village so as to change its class, cause a proposition for so diminishing such boundaries to be submitted at the next succeeding annual village election, or a special election called for the purpose of voting upon such proposition. If the proposition be adopted, the petition, consent and certificate of the result of the vote cast upon the proposition shall be recorded in the village book of records. The diminishing of such boundaries shall take effect thirty days after such election. Within ten days after the adoption of such proposition, a certificate containing a description of the territory sought to be excluded, stating the assessed valuation thereof and the number of inhabitants therein, shall be filed in the town clerk's office of each town, and in the county clerk's office of each county in which the village is wholly or partly situated, and also in the office of the secretary of state. Territory so excluded from the village shall not be relieved from bearing its proportionate share of any liability or indebtedness incurred by such village while such territory was a part thereof, and until such liability is discharged, or such indebtedness paid, the proportionate share to which such territory would be liable if it had not been excluded shall be levied upon, assessed and collected from such territory by the proper officers of such village, in the same manner as if such territory had not been excluded therefrom. Provided, however, that this section shall not apply to any county in the state which has adopted, or may hereafter adopt, the system of highway improvement under article six of the highway law.

This section was derived from Village Law, L. 1897, ch. 414, § 326a, as added by L. 1903, ch. 606, § 1.

Exclusion of counties adopting highway improvement system.—The present section in terms excludes from its provisions any county in the state which has adopted or may adopt the system of highway improvement authorized by article 6 of the Highway Law. Steele v. Glen Park, (1908) 193 N. Y. 341, 86 N. E. 26, affirming 119 App. Div. 918, 105 N. Y. S. 1144; Union Free School Dist. No. 1 v. Glen Park, (1905) 109 App. Div. 414, 96 N. Y. S. 428.

§ 350. Dissolution of villages. A proposition for the dissolution of a village may be submitted at a special election. If the proposition be defeated a second proposition for that purpose shall not be submitted within two years of the date of such special election. If a second proposition to dissolve a village has been defeated any subsequent proposition for that purpose shall not be submitted within five years of the date of the special election at which the preceding proposition was defeated. If the proposition be adopted, it must be again submitted at the next annual election held not less than six months subsequent to the special election.

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If the proposition be adopted at such annual election, a certificate thereof shall be filed in the office of the town clerk, and of the county clerk of each county in which any part of the village is situated, and also with the secretary of state. At the expiration of six months from such annual election the village shall be dissolved. Within that period, the board of trustees must submit at a special election a proposition for the disposition of the village property remaining after the payment of all claims for which the village shall be liable, and also for the raising by tax of any sum that may be necessary to pay and discharge its existing debts and liabilities. Upon the dissolution of the village all its records, books, and papers shall be deposited with the town clerk of the town in which the principal portion of such village is situated, and they shall thereupon become a part of the records of such town.

The supervisor of such town shall be the trustee of the property of the village. No suit in which the village is a party, nor any claim for or against the village shall be affected by its dissolution.

This section was derived from Village Law, L. 1897, ch. 414, § 327, as amended by L. 1901, ch. 53, § 1.

Application to village created by special charter.— It was ruled in Op. Atty.-Gen. (1909) 898, that there being nothing in the special statute under which a village was incorporated upon the question of the dissolution of the village, there was nothing inconsistent with the full operation of the present section upon the village.

§ 351. Expiration of terms of officers. A police justice or an assessor in office when this chapter takes effect shall continue in office until the expiration of the term for which he was elected or appointed. Except as otherwise provided in this chapter the terms of all other officers shall expire on the Monday following the third Tuesday in March.

This section was derived from Village Law, L. 1897, ch. 414, § 328.

Members of board of health as village officers.— It was held in People v. Scott, (1900) 31 Misc. 131, 64 N. Y. S. 970, affirmed 57 App. Div. 630, 68 N. Y. S. 1146, that members of a village board of health were village officers and were legislated out of office by the Village Law (L. 1897, ch. 414, § 328) on the Monday following the third Tuesday in March, 1898.

Cited.—This section was cited in Op. Atty.-Gen. (1897) 232, in reference to the term of office of a police justice under the Village Law of 1897. The section was also cited in Op. Atty.-Gen. (1898) 117, with reference to the number and terms of office of village trustees.

§ 352. Consolidation of villages. Two or more adjoining villages either wholly subject to this chapter, or one or more wholly subject to this chapter and one or more incorporated by special act of the legislature, may be consolidated by adopting a proposition therefor at any election, which shall be held in each of such villages on the same day, but not after the last day of January and before the date of the annual election. At least ten days before such special election the board of trustees of such villages

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shall meet in joint session and determine on the name for the consolidated village, and shall forthwith file a certificate specifying such name in the office of the clerk of each village. The ballots to be used at such election may be written or printed and shall contain either the words "for the consolidation of the village of (naming it) with the village (or villages) of (naming it or them) into one village by the name of (name fixed by trustees)," or "against the consolidation of the village of (naming it) with the village (or villages) of (naming it or them) into one village by the name of (name fixed by trustee)."

This section was derived from Village Law, L. 1897, ch. 414, § 329, as added by L. 1899, ch. 56, § 1, and amended by L. 1902, ch. 520, § 1.

§ 353. Filing certificates. The clerk of each such villages shall within three days after the election file a certified copy of the certificate of such election in the office of each other village included in the proposed consolidation. If the proposition for consolidation be adopted in all the villages, the clerks thereof shall within five days after the election file in the office of the clerk of each county in which any part of either of such villages is situated, and also in the office of the secretary of state, a joint certificate, stating the holding of the election, the adoption of the proposition for consolidation by each village and the name of the new village.

This section was derived from Village Law, L. 1897, ch. 414, § 330, as added by L. 1899, ch. 56, § 1.

§ 354. Effect of consolidation. On the filing of such certificate in the office of the secretary of state, such villages shall be consolidated into one village by the name specified in such certificate. Such new village shall possess all the powers, enjoy all the privileges, and be subject to all the liabilities, in all respects and for all purposes, as if it had been originally incorporated under this chapter; and from the date of the consolidation it shall belong to the class in which it would have been placed if the consolidation had taken effect immediately before the last preceding enumeration of the inhabitants of the several consolidating villages under this chapter, according to the aggregate returns of such enumeration on file at the date of the consolidation. Such new village shall become the owner of all the property of each of the consolidating villages, shall succeed to every right of action existing in favor of either of them, and shall become liable for all causes of action, debts or obligations against either of such consolidated villages, and the same may be enforced as if such liability, debt or obligation had been originally incurred by it. Such consolidation shall not affect any action or proceeding then pending against either of the consolidating villages, but such action or proceeding may be prosecuted to final judgment as if such consolidation had not

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taken place, except that the court in which such action or proceeding is pending shall, upon application of the board of trustees of the new village, substitute it as a party to the action or proceeding, and in either case the judgment or order shall be enforceable in favor of or against the new village.

This section was derived from Village Law, L. 1897, ch. 414, § 331, as added by L. 1899, ch. 56, § 1.

§ 355. Number of trustees; wards; clerk. Within five days after the consolidation takes effect the boards of trustees of the consolidating villages shall meet in joint session and determine, within the limitations prescribed by section forty-four, the number of trustees to be elected in the new village at the first election, and if such new village is a village of the first class, may also divide such village into wards of a number equal to one-half of the number of trustees to be elected. Such wards shall contain a population as nearly equal as may be, and be of convenient and contiguous territory, in as compact form as practicable. They shall make a certificate of such division which shall contain a description of each ward, and file the same in the office of the village clerk, who shall at least fifteen days before such first election post copies thereof in at least ten conspicuous public places in such village and publish a copy thereof at least once in each newspaper printed in the new village. They shall also at such joint meeting appoint a clerk of the new village, who shall hold his office until his successor is appointed.

This section was derived from Village Law, L. 1897, ch. 414, § 332, as added by L. 1899, ch. 56, § 1.

§ 356. First election in consolidated village. At their joint meeting, the boards of trustees of the consolidating villages shall fix the date of the first election, which must be held within twenty days after the joint meeting, except that if the election on the question of consolidation is held in the month of January, such first election must be held on the day of the next annual election under this chapter. They shall provide for giving notice of such election as in case of annual election under this chapter. If such village is not divided into wards, the first election shall be held in the consolidating villages by election districts or otherwise as if such consolidation had not taken place. If such village is divided into wards, each ward shall constitute an election district for the first election and the boards of trustees of the consolidating villages at their joint meeting shall appoint two inspectors of election, a poll clerk and a ballot clerk for each ward to conduct such election therein. Such inspectors shall not both be chosen from the same political party. Section twenty-nine of this chapter applies, so far as practicable, to the first election in the new village,

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except that if an election is held after the thirtieth day of September and on or before the date fixed for the next annual election, one-half of the number of trustees elected shall hold office until the end of the next official year, and one-half during the next two official years. If such village is divided into wards, two trustees shall be elected in each ward, and if the election is held after the thirtieth day of September and on or before the date fixed for the next annual election, one of such trustees shall be elected to hold office until the end of the next official year, and one to hold office during the next two official years. Section fifty-three of this chapter applies, so far as practicable, and the joint boards of trustees shall constitute the canvassing board at such first election. The certificate of such first election shall be filed with the clerk of the new village on the day of canvass, and thereupon the terms of office of the officers of the consolidating villages shall expire and the terms of officers elected for the new village shall commence.

This section was derived from Village Law, L. 1897, ch. 414, § 333, as added by L. 1899, ch. 56, § 1.

§ 357. Transfer of property to new village. Within five days after the qualification of the officers of the new village, the officers of the consolidating villages shall deliver to the proper officers thereof all money, records, books, papers or other property belonging to the village in their possession or under their control, and such new village shall thereupon become the owner thereof and its proper officers shall be the custodians thereof as prescribed by this chapter.

This section was derived from Village Law, L. 1897, ch. 414, § 334, as added by L. 1899, ch. 56, § 1.

Delivery of books and papers: see PUBLIC OFFICERS LAW, § 80.

Officer refusing to surrender to successor: see PENAL LAW, § 1836.

§ 358. Reports of treasurers. The treasurer of each of such consolidating villages shall, immediately on the termination of his office, file with the clerk of the new village an accurate, detailed and verified statement, showing all moneys paid into the treasury of his village during the current fiscal year, the persons by whom, and the funds for which the same were paid, all expenditures from the treasury during such period, the persons to whom, and the funds from which such moneys were paid, the balance in the treasury to the credit of each fund at the time of making such report, and all indebtedness of the village outstanding, to whom, so far as practicable, the same is owing, upon what account and when payable.

This section was derived from Village Law, L. 1897, ch. 414, § 335, as added by L. 1899, ch. 56, § 1.

§ 359. Establishment of disputed, unknown or uncertain boundaries. If the boundary lines, or any of the boundary lines,

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of any incorporated village organized or existing pursuant to general or special act, or whose incorporation is lawfully established, are uncertain or there is a reasonable doubt as to their exact location, for any reason, or if, in the statute or records by which the village was incorporated a boundary line or lines was not completed, leaving a hiatus therein, or if the records and papers showing the boundaries of a village incorporated under a general act are lost or cannot be identified, such boundary line or lines may be settled and established in the following manner: An application in writing, subscribed by the president of the village, requesting the establishment of such boundaries, may be presented to the board of supervisors of the county in which the village is located. It shall then be the duty of such board of supervisors to take action upon the application by resolution, at such time, within sixty days thereafter, as it may determine; but the board shall not adopt any resolution determining or defining such boundary line or lines until after a public hearing is had thereon, before the board, upon a notice to be published for three consecutive weeks next preceding the meeting of the board at which the matter is to be heard, in a newspaper published in the village, and if there be a newspaper published in the town outside of the village, in one such newspaper also. A copy of the notice shall also be served personally, at least fifteen days before the meeting of such board, on the supervisor and town clerk of the town or each of the towns in which the village is located. The board shall give a hearing to all persons appearing in support of or in opposition to the adoption of such resolution or presenting statutes, records, documents or other facts affecting the boundaries of such village. The board may take proof and testimony relating to the subject-matter of such investigation. The board may adopt a resolution determining and defining the boundary lines of the village, to include both the known and undisputed lines as well as those which are uncertain or unknown as aforesaid. A copy of the resolution, as adopted by the board, shall contain the courses, distances and fixed monuments necessary for an accurate description thereof, and a copy of such resolution duly certified by the clerk of the board, together with a map or survey of such boundaries as fixed by the board, shall be filed in the office of the secretary of state within thirty days after the adoption of the resolution. The filing of such map shall be equivalent to a compliance with the provisions of section eighty of this chapter; but where a map shall not have been filed pursuant to the requirements of such section on account of the boundary lines of a village being uncertain or unknown, as provided in this section, proceedings for the establishment and settlement thereof shall be begun by the president of the village under the provisions of this section within three months after this section takes effect. The boundary lines shall be those fixed by the resolution, but this

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section shall not be deemed to authorize the inclusion within a village of any substantial area of territory which has not been either (1) commonly recognized as a part of the village or (2) treated and claimed by the village authorities, at some time previously, as a part of the village or, (3) the subject of a reasonable dispute, on a question of law or fact, as to its location within or without the village. The expense of making any map or survey accompanying the filing of such resolution, by whomsoever incurred, or in the production of papers, documents or statutes at the hearing relating to such boundary lines, shall be borne by the village and the payment thereof provided for by taxation in the village as other village expenses.

New. Added by L. 1912, ch. 123, § 1.

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ARTICLE 16

Effect of Chapter

Section 380. Effect of chapter on special villages.
381. Effect of revision on general villages.

§ 380. Effect of chapter on special villages. A village incorporated under and subject to a special law, and each officer thereof, possesses all the powers and is subject to all the liabilities and responsibilities conferred or imposed upon a village incorporated under this chapter, or upon an officer thereof, not inconsistent with such special law.

This section was derived from Village Law, L. 1897, ch. 414, § 340.

"Responsibilities" as inclusive of duties.—The word "responsibilities" in the present section includes duties. Matter of Board of Health, (1899) 43 App. Div. 236, 60 N. Y. S. 27.

Cited.—This section was cited in the following cases: O'Connor v. Waterford, (1916) 171 App. Div. 425, 156 N. Y. S. 933, in connection with the question of the application of section 131 of the Village Law to the village of Waterford; Haner v. Owego, (1915) 165 App. Div. 734, 151 N. Y. S. 109, affirming 146 N. Y. S. 475, with reference to the application of section 341 of the Village Law to a village organized under a special charter; Bath v. McBride, (1914) 163 App. Div. 714, 148 N. Y. S. 836, 840, reversing 81 Misc. 618, 142 N. Y. S. 1014, with reference to the application of section 81 of the Village Law to a village incorporated under a special charter; People v. Connolly, (1914) 161 App. Div. 745, 147 N. Y. S. 186, affirmed (1914) 212 N. Y. 599 mem., with reference to the question of the rights of an inspector and engineer on the local sewer system of the village of Jamaica prior to the consolidation; Canandaigua v. Hayes, (1904) 90 App. Div. 336, 85 N. Y. S. 488, with reference to the power of the village of Canandaigua which was incorporated under a special act, to issue bonds for street paving purposes; Jones v. Foster, (1899) 43 App. Div. 33, 59 N. Y. S. 738, with reference to the application of subdivision 1 of section 91 of the Village Law to a village incorporated under a special charter; Matter of Grab, (1898) 31 App. Div. 610, 52 N. Y. S. 395, appeal dismissed (1898) 157 N. Y. 69, 51 N. E. 398, with reference to the application of section 159 of the Village Law to a village created by special charter; Wakefield v. Perkins, (1910) 65 Misc. 619, 120 N. Y. S. 635, with reference to the application of section 128 of the Village Law to the village of Port Chester, which was incorporated under a special charter; Harris v. Churchill, (1915) 152 N. Y. S. 73, affirmed 171 App. Div. 282, 156 N. Y. S. 844, with reference to the application of section 264 of the Village Law of 1897, to village sewer construction in view of the enactment of chapter 506 of the Laws of 1902; 10 St. Dept. Rep. 503, in reference to the application of section 42 of the Village Law to the village of Lancaster, which was incorporated under a special charter; 12 St. Dept. Rep. 514, with reference to the power of the trustees of the village of Mayville to increase the salary of the village treasurer, under section 86 of the Village Law; Op. Atty.-Gen. (1904) 302, with reference to the question of the application of section 103 of the Village Law to the village of Lima, existing under a special charter; Op. Atty.-Gen. (1902) 166, with reference to the question of the application of section 110 of the Village Law to the village of Mayville, in view of the provisions of its special charter.

§ 381. Effect of revision on general villages. The following villages are subject to the provisions of this chapter, as if incorporated thereunder:

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1. Villages incorporated under chapter four hundred and twenty-six of the laws of eighteen hundred and forty-seven, or the acts amendatory thereof and supplementary thereto, and which have not been reincorporated under a special law.

2. Villages incorporated or reincorporated under chapter two hundred and ninety-one of the laws of eighteen hundred and seventy, or the acts amendatory thereof and supplemental thereto.

3. Villages incorporated under chapter four hundred and fourteen of the laws of eighteen hundred and ninety-seven, or the acts amendatory thereof and supplemental thereto.

4. Villages incorporated by special law and reincorporated under a general law and now subject to its provisions.

This section was derived from Village Law, L. 1897, ch. 414, § 341.

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ARTICLE 17

Laws Repealed; When to Take Effect

Section 390. Laws repealed.
391. When to take effect.

§ 390. Laws repealed. Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

Laws 1909, ch. 240, § 83, specifically repeals this section as enacted by Village Law of 1909; but the repeal is followed by the matter given in the text.

§ 391. When to take effect. This chapter shall take effect immediately.

Schedule of Laws Repealed

Laws of	Chapter	Section
1847.....	151.....	All
1847.....	209.....	All
1847.....	426.....	All
1850.....	176.....	All
1851.....	519.....	All
1852.....	184.....	All
1857.....	552.....	All
1861.....	178.....	All
1864.....	117.....	All
1868.....	462.....	All
1870.....	291.....	All
1870.....	311.....	Part relating to division of streets on boundary line between villages and other municipal corporations
1871.....	688.....	All
1871.....	696.....	All
1871.....	870.....	All
1872.....	357.....	All
1872.....	696.....	All
1873.....	92.....	All
1873.....	397.....	11
1874.....	78.....	All
1874.....	345.....	All
1874.....	474.....	All
1874.....	628.....	All
1875.....	149.....	All

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Laws of	Chapter	Section
1875.....	181.....	All
1875.....	197.....	All
1875.....	242.....	All
1875.....	339.....	All
1875.....	385.....	All
1875.....	514.....	All
1875.....	570.....	All
1876.....	92.....	All
1876.....	134.....	All
1876.....	308.....	All
1876.....	317.....	All
1877.....	16.....	All
1877.....	244.....	All
1878.....	59.....	All
1878.....	249.....	All
1878.....	281.....	All
1878.....	396.....	All
1879.....	68.....	All
1879.....	86.....	All
1879.....	129.....	All
1879.....	228.....	All
1879.....	250.....	All
1879.....	337.....	All
1880.....	64.....	All
1880.....	78.....	All
1880.....	144.....	All
1880.....	172.....	All
1880.....	235.....	All
1880.....	292.....	All
1880.....	302.....	All
1880.....	422.....	All
1880.....	496.....	All
1881.....	17.....	All
1881.....	175.....	All
1881.....	249.....	All
1881.....	353.....	All
1881.....	387.....	All
1881.....	408.....	All
1881.....	415.....	46
1881.....	615.....	All
1881.....	690.....	All
1882.....	226.....	All
1882.....	305.....	All
1882.....	316.....	All
1883.....	90.....	All

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Laws of	Chapter	Section
1883.....	113.....	All
1883.....	118.....	All
1883.....	153.....	All
1883.....	255.....	All
1883.....	459.....	All
1883.....	465.....	All
1884.....	129.....	All
1884.....	131.....	All
1884.....	281.....	All
1884.....	308.....	All
1884.....	423.....	All
1885.....	170.....	All
1885.....	192.....	All
1885.....	211.....	All
1885.....	236.....	All
1885.....	450.....	All
1886.....	497.....	All
1886.....	556.....	All
1886.....	600.....	All
1886.....	616.....	All
1887.....	68.....	All
1887.....	244.....	All
1887.....	504.....	All
1887.....	513.....	All
1887.....	514.....	All
1888.....	172.....	All
1888.....	342.....	All
1888.....	452.....	All
1888.....	525.....	All
1889.....	174.....	All
1889.....	186.....	All
1889.....	229.....	All
1889.....	246.....	All
1889.....	375.....	All
1889.....	440.....	All
1889.....	455.....	All
1889.....	507.....	All
1890.....	82.....	All
1890.....	196.....	All
1890.....	213.....	All
1890.....	235.....	All
1890.....	236.....	All
1890.....	371.....	All
1890.....	527.....	All
1890.....	542.....	All

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Laws of	Chapter	Section
1891.....	74.....	All
1891.....	116.....	All
1891.....	139.....	All
1891.....	160.....	All
1891.....	201.....	All
1891.....	306.....	All
1891.....	312.....	All
1891.....	316.....	All
1892.....	194.....	All
1892.....	195.....	All
1892.....	222.....	All
1892.....	349.....	All
1892.....	564.....	All
1892.....	593.....	All
1892.....	640.....	All
1893.....	212.....	All
1893.....	400.....	All
1893.....	422.....	All
1893.....	447.....	All
1893.....	464.....	All
1893.....	473.....	All
1893.....	503.....	All
1893.....	617.....	All
1893.....	618.....	All
1893.....	624.....	All
1893.....	662.....	All
1893.....	694.....	All
1894.....	161.....	All
1894.....	172.....	All
1894.....	284.....	All
1894.....	318.....	All
1894.....	413.....	All
1894.....	666.....	Part relating to villages
1894.....	673.....	All
1894.....	680.....	All
1895.....	113.....	All
1895.....	146.....	All
1895.....	154.....	All
1895.....	187.....	All
1895.....	202.....	All
1895.....	383.....	All
1895.....	430.....	All
1895.....	437.....	All
1895.....	743.....	All
1895.....	879.....	All

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Laws of	Chapter	Section
1896.....	166.....	All
1896.....	209.....	All
1896.....	243.....	All
1896.....	310.....	All
1896.....	329.....	All
1896.....	341.....	All
1896.....	409.....	All
1896.....	457.....	All
1896.....	458.....	All
1896.....	522.....	All
1896.....	663.....	All
1896.....	688.....	All
1896.....	923.....	All
1896.....	978.....	All
1897.....	332.....	All
1897.....	414.....	All
1898.....	145.....	All
1898.....	195.....	All
1898.....	365.....	All
1898.....	539.....	All
1898.....	668.....	All
1899.....	56.....	All
1899.....	82.....	All
1899.....	154.....	All
1899.....	217.....	All
1899.....	326.....	All
1899.....	391.....	All
1899.....	446.....	All
1900.....	373.....	All
1901.....	7.....	All
1901.....	50.....	All
1901.....	53.....	All
1901.....	68.....	All
1901.....	155.....	All
1901.....	509.....	1
1901.....	593.....	All
1901.....	624.....	All
1902.....	280.....	All
1902.....	520.....	All
1902.....	591.....	All
1903.....	131.....	All
1903.....	139.....	All
1903.....	202.....	All
1903.....	313.....	All
1903.....	606.....	All

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Laws of	Chapter	Section
1903.....	617.....	All
1904.....	34.....	All
1904.....	35.....	All
1904.....	100.....	All
1904.....	101.....	All
1904.....	122.....	All
1904.....	193.....	All
1904.....	231.....	All
1904.....	497.....	All
1904.....	645.....	All
1904.....	680.....	All
1905.....	66.....	All
1905.....	98.....	All
1905.....	220.....	All
1905.....	259.....	All
1905.....	290.....	All
1905.....	300.....	All
1905.....	404.....	All
1905.....	498.....	All
1905.....	500.....	All
1906.....	34.....	All
1906.....	57.....	All
1906.....	97.....	All
1906.....	278.....	All
1906.....	397.....	All
1906.....	404.....	All
1906.....	452.....	All
1906.....	577.....	All
1906.....	602.....	All
1907.....	38.....	All
1907.....	44.....	All
1907.....	59.....	All
1907.....	82.....	All
1907.....	93.....	All
1907.....	158.....	All
1907.....	471.....	All
1907.....	607.....	All
1908.....	100.....	All
1908.....	176.....	All
1908.....	300.....	1
1908.....	301.....	All
1908.....	302.....	All
1908.....	461.....	All
1908.....	509.....	All
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NOTES TO SCHEDULE OF APPEALS

Prepared by the Board of Statutory Consolidation and printed in their report of 1907, at page 6416.

L. 1851, Ch. 519. Act amending L. 1847, Ch. 426. Section 2 was repealed by L. 1897, Ch. 414, § 342. Section 1 is a repealing section. Balance of act is obsolete.

As the statutes covered by express repealing acts have been repealed by the Consolidated Laws, the repealing statutes have been recommended for repeal.

L. 1880, Ch. 302. Authorizes cities and incorporated villages to charge license fees to persons doing a retail business on the canals of this state. Substance of this act is contained in "old" General City Law, § 8, and Village Law, § 90, subd. 2; § 91, subd. 2, this law. Superseded and obsolete.

L. 1883, Ch. 113, and amendatory acts. Part relating to change of grade of streets and bridges by village authorities repealed by L. 1897, Ch. 414, § 342, subd. 4. Balance of act consolidated in Highway Law, § 15.

L. 1894, Ch. 666. Part of statute relating to villages. Consolidated in Village Law, §§ 344–346. Remainder of statute consolidated in Town Law.

L. 1897, Ch. 414. This statute, which is the "old" Village Law, is recommended for repeal because its live provisions have been incorporated in the Village Law, except §§ 46–48, 72, which provided for readjustment of affairs of villages at time village law took effect. Temporary and obsolete.

L. 1898, Ch. 145. Consolidated in Village Law, § 205.

L. 1898, Ch. 539. Consolidated in Village Law, § 113.

L. 1898, Ch. 668. Consolidated in Village Law, § 65.

L. 1899, Ch. 56. Section 1, part adding § 329 to L. 1897, Ch. 414, amended to read as follows by L. 1902, Ch. 520, § 1. Balance of section consolidated in Village Law, §§ 353–358. Section 2 states when act shall take effect.

L. 1889, Ch. 82. Consolidated in Village Law, § 234.

L. 1899, Ch. 217. Consolidated in Village Law, § 338.

L. 1899, Ch. 391. Consolidated in Village Law, § 90, subd. 28.

L. 1901, Ch. 7. Consolidated in Village Law, § 44.

L. 1901, Ch. 50. Consolidated in Village Law, § 89, subd. 23.

L. 1901, Ch. 53. Consolidated in Village Law, § 350.

L. 1901, Ch. 68. Consolidated in Village Law, § 159.

L. 1901, Ch. 155. Consolidated in Village Law, § 43.

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L. 1901, Ch. 509. Section 1 amended to read as follows by L. 1906, Ch. 404, § 2. Balance of act disposed of in Town Law.

L. 1901, Ch. 593. Consolidated in Village Law, § 89, subd. 24.

L. 1901, Ch. 624. Consolidated in Village Law, §§ 171–174.

L. 1902, Ch. 520. Consolidated in Village Law, § 352.

L. 1902, Ch. 591. Consolidated in Village Law, § 230.

L. 1903, Ch. 131. Consolidated in Village Law, § 224.

L. 1903, Ch. 139. Sections 1, 2 amended to read as follows by L. 1904, Ch. 35, §§ 2, 3. Section 3 consolidated in Village Law, § 6. Section 4 states when act shall take effect.

L. 1903, Ch. 606. Consolidated in Village Law, § 349.

L. 1904, Ch. 34. Consolidated in Village Law, § 120.

L. 1904, Ch. 35. Consolidated in Village Law, §§ 2, 3, 5.

L. 1904, Ch. 100. Section 1 consolidated in Village Law, § 51. Section 2, part amending L. 1897, Ch. 414, § 55, amended to read as follows by L. 1904, Ch. 231, § 1. Balance of § 2 consolidated in Village Law, § 55. Section 3 states when act shall take effect.

L. 1904, Ch. 101. Consolidated in Village Law, § 133.

L. 1904, Ch. 122. Consolidated in Village Law, § 162.

L. 1904, Ch. 193. Consolidated in Village Law, § 89, subd. 15, § 128.

L. 1904, Ch. 497. Consolidated in Village Law, § 165.

L. 1904, Ch. 645. Consolidated in Village Law, § 206.

L. 1904, Ch. 680. Consolidated in Village Law, § 130.

L. 1905, Ch. 66. Consolidated in Village Law, § 64.

L. 1905, Ch. 98. Consolidated in Village Law, § 161.

L. 1905, Ch. 220. Consolidated in Village Law, § 202.

L. 1905, Ch. 259. Consolidated in Village Law, § 305.

L. 1905, Ch. 290. Consolidated in Village Law, §§ 46, 52.

L. 1905, Ch. 300. Consolidated in Village Law, § 104.

L. 1905, Ch. 404. Consolidated in Village Law, § 25.

L. 1905, Ch. 498. Consolidated in Village Law, § 103.

L. 1905, Ch. 500. Consolidated in Village Law, § 89, subd. 25.

L. 1906, Ch. 34. Section 1, part adding § 339g to L. 1897, Ch. 414, amended to read as follows by L. 1907, Ch. 38, § 1. Balance of section consolidated in Village Law, §§ 310–315, 317–321. Section 2 states when act shall take effect.

L. 1906, Ch. 57. Consolidated in Village Law, § 56.

L. 1906, Ch. 278. Consolidated in Village Law, § 260.

L. 1906, Ch. 397. Consolidated in Village Law, § 83.

L. 1906, Ch. 404. Consolidated in Village Law, §§ 12, 41.

L. 1906, Ch. 452. Consolidated in Village Law, § 42.

L. 1906, Ch. 577. Consolidated in Village Law, § 90, subd. 9.

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L. 1906, Ch. 602. Section 1 is a repealing section. Section 2 consolidated in Village Law, § 40. Section 3 states when act shall take effect.

L. 1907, Ch. 38. Consolidated in Village Law, § 316.

L. 1907, Ch. 44. Consolidated in Village Law, § 166.

L. 1907, Ch. 59. Consolidated in Village Law, § 128, subd. 12.

L. 1907, Ch. 82. Consolidated in Village Law, § 48.

L. 1907, Ch. 93. Consolidated in Village Law, § 170.

L. 1907, Ch. 158. Consolidated in Village Law, § 105.

L. 1907, Ch. 471. Consolidated in Village Law, §§ 189, 190.

L. 1907, Ch. 607. Consolidated in Village Law, §§ 21, 348.

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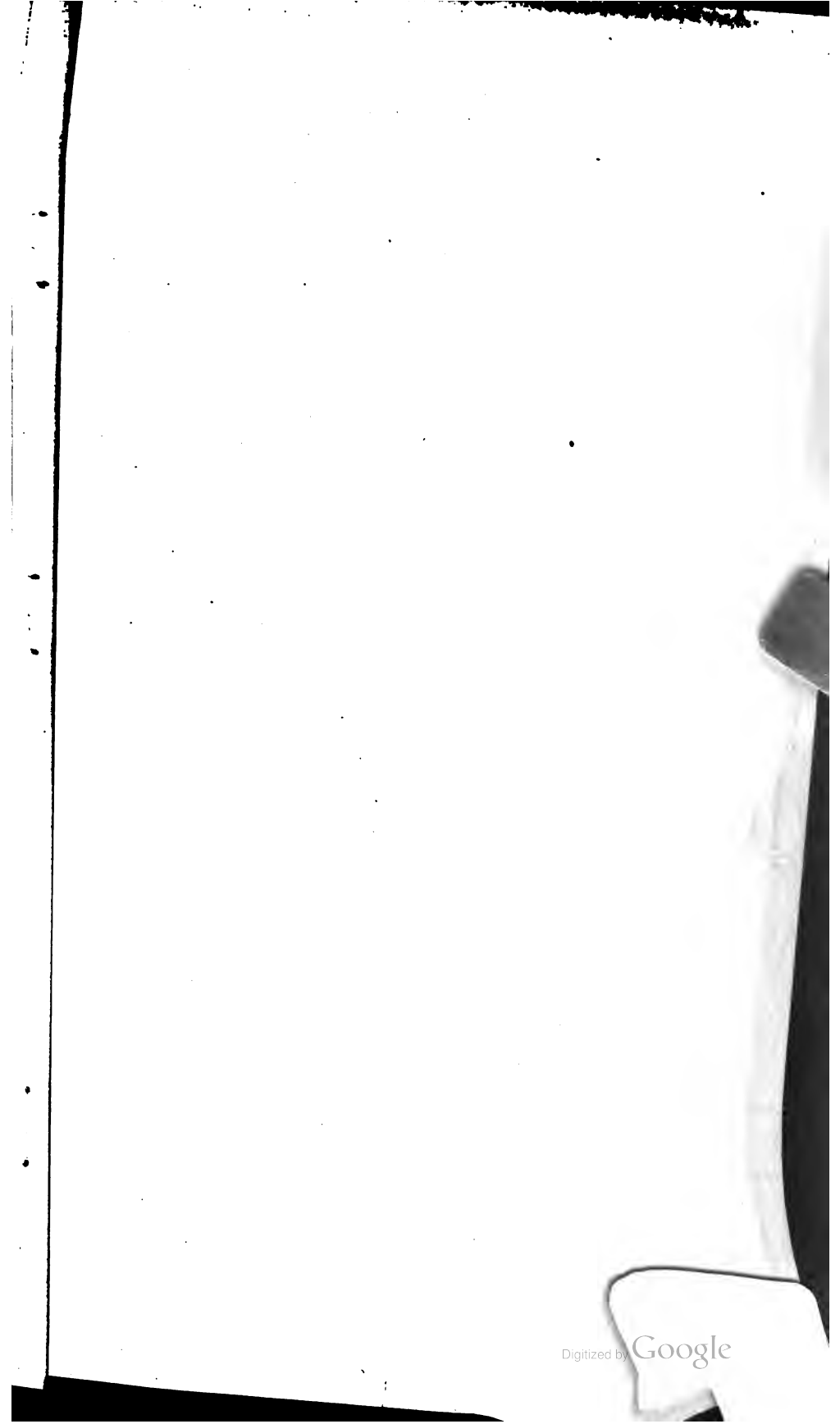
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